



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 2 मई, 2013 / 12 वैशाख, 1935

हिमाचल प्रदेश सरकार

HIGH COURT OF HIMACHAL PRADESH, SHIMLA- 171 0 01

NOTIFICATION

Shimla, the 29th April, 2013

No. HHC/GAZ/14-53/74-V.—In the interest of administration, the following transfers and postings of the members of the H.P. Judicial Service are hereby ordered with immediate effect:—

1. Shri D. K. Sharma, Registrar Vigilance, High Court of H. P., Shimla is transferred and posted as District and Sessions Judge, Una.
2. Shri Sushil Kukreja, District and Sessions Judge, Bilaspur is transferred and posted as District and Sessions Judge, Kinnaur at Rampur Bushahr.
3. The services of Shri A. S. Jaswal, District and Sessions Judge, Kinnaur at Rampur Bushahr are placed at the disposal of the State Government for being posted as Presiding Officer, Labour Courtcum-Industrial Tribunal, Shimla.

4. Shri S.L. Sharma, District and Sessions Judge (Forest), Shimla is transferred and posted as District and Sessions Judge, Solan.
5. Shri Virender Singh, District and Sessions Judge, Mandi is transferred and posted as District and Sessions Judge, Kangra at Dharamshala.
6. Shri S. C. Kainthla, District and Sessions Judge, Solan is transferred and posted as District and Sessions Judge, Mandi.
7. The services of Shri Rajeev Bhardwaj, President District Consumer Disputes Redressal Forum, Mandi are recalled and he is posted as District and Sessions Judge, Bilaspur.
8. Shri Baldev Singh, District and Sessions Judge, Kullu is transferred and posted as District and Sessions Judge (Forest), Shimla.
9. The services of Shri Purender Vaidya, Labour Court-cum-Industrial Tribunal, Shimla are recalled and he is posted as District and Sessions Judge, Kullu.
10. The services of Shri J.N. Yadav, Addl. District and Sessions Judge, Solan on his placement as District and Sessions Judge are placed at the disposal of the State Government for being posted as President District Consumer Disputes Redressal Forum, Mandi.
11. Shri Virender Sharma, Addl. District and Sessions Judge-I, Shimla is transferred and posted as Addl. District and Sessions Judge-I, Solan.
12. Dr. Baldev, Addl. District and Sessions Judge-I, Mandi is transferred and posted as Additional District and Sessions Judge-I, Shimla.
13. Shri K. K. Sharma, Addl. District and Sessions Judge-II) Solan is transferred and posted as Additional District and Sessions Judge-II, Kangra at Dharamshala.
14. Shri P. P. Ranta, Addl. District and Sessions Judge, Ghumarwin is transferred and posted as Addl. District and Sessions Judge-II, Mandi.
15. Shri Davinder Kumar, Addl. District and Sessions Judge-II, Una is transferred and posted as Additional District and Sessions Judge-I, Una.
16. Shri Yogesh Jaswal, Addl. District and Sessions Judge-II, Shimla is transferred and posted as Additional District and Sessions Judge, Ghumarwin.
17. Shri Bahadur Singh, Addl. District and Sessions Judge, Kullu is transferred and posted as Additional District and Sessions Judge, Sirmaur at Nahan.
18. Shri. Pradeep Samyal, Civil Judge (Senior Division)-cum-CJM, Shimla is transferred and posted as Civil Judge (Senior Division)-cum-CJM, Una.
19. Shri R. K. Tomar, Civil Judge (Senior Division)-cum-CJM, Una is transferred and posted as Civil Judge (Senior Division)-cum-CJM, Kangra at Dharamshala.
20. Shri Ajay Mehta, Civil Judge (Senior Division)-cum-CJM, Kangra at Dharamshala is transferred and posted as Civil Judge (Senior Division)-cum-CJM, Mandi.

21. The services of Smt. Jyotsna S. Dadhwal, Additional Secretary (Law) to the Government of H. P. are recalled and she is posted as Civil Judge (Senior Division)-cum-CJM, Shimla.
22. Smt. Aparna Sharma, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Kangra is transferred and posted as Civil Judge (Senior Division)-cum-CJM, Chamba on her placement as Chief Judicial Magistrate.
23. Shri Krishan Kumar, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Sarkaghat is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Nurpur.
24. Shri Naresh Kumar, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Palampur is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Amb.
25. Smt. Praveen Chauhan, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Mandi is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Hamirpur.
26. Shri Vivek Sharma-I, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Nurpur is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Sarkaghat.
27. Shri Ranjeet Singh, Civil Judge (Senior Division)-cum-JMIC Court No.1, Ghumarwin is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Sundernagar.
28. Shri Rajesh Chauhan, Civil Judge (Senior Division)-cum-JMIC, Court No.2, Mandi is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Ghumarwin.
29. Shri Sachin Raghu, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Amb is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Theog.
30. Shri Rajinder Kumar, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Rohru is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Palampur.
31. Smt. Kanta Verma, Civil Judge (Senior Division)-cum-JMIC, Court No.2, Palampur is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Una.
32. Shri Arvind Kumar, Civil Judge (Senior Division)-cum-JMIC, Court No.2, Shimla is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Dehra.
33. Shri Abhay Mandyal, Civil Judge (Senior Division)-cum-JMIC, Court No.1, Una is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Court No.1, Kangra.
34. Shri Hitender Kumar, Civil Judge (Senior Division)-cum-JMIC, Barsar is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Nadaun.
35. Shri Hoshiar Singh Verma, Civil Judge (Junior Division)-cum-JMIC, Court No.II, Paonta Sahib is transferred and posted as Civil Judge (Senior Division)-cum-JMIC, Nalagarh, on his promotion against vacant post.

36. Shri Amit Mandyal, Civil Judge (Junior Division)-cum-JMIC Court No.4, Shimla is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Court No.2, Amb.
37. Shri Ramnik Sharma, Civil Judge (Junior Division)-cum-JMIC, Court No. 2, Ghumarwin is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Court No. 2, Mandi.
38. Shri Vivek Sharma-II, Civil Judge (Junior Division)-cum-JMIC, Dalhousie is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Court No.2, Ghumarwin.
39. Shri Vikrant Kaundal, Civil Judge (Junior Division)-cum-JMIC, Solan is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Barsar.
40. Shri Subhash Chander Bhaseen, Civil Judge (Junior Division)-cum-JMIC, Court No.2, Amb is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Solan.
41. Ms. Divya Jyoti Patial, Civil Judge (Junior Division)-cum-JMIC Court No.2, Hamirpur is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Court No.4, Una.
42. Shri Nikhil Aggarwal, Civil Judge (Junior Division)-cum-JMIC, Court No.7, Shimla is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Court No.2, Hamirpur.
43. Shri Hakikat, Civil Judge (Junior Division)-cum-JMIC, Court No.3, Hamirpur is transferred and posted as Civil Judge (Junior Division)-cum-JMIC, Dalhousie.
44. Ms. Akshi Sharma, Civil Judge (Junior Division)-cum-JMIC, Court No.5, Shimla is transferred and posted as Civil Judge (Jr. Division)-cum-JMIC, Court No.2, Dehra.
45. Ms. Neha Sharma, Civil Judge (Junior Division)-cum-JMIC, Court No.4, Una is transferred and posted as Civil Judge (Jr. Division)-cum-JMIC, Court No. 4, Shimla.

The above named Judicial Officers will join their new places of postings on or before 20th May, 2013.

By order of the Hon'ble High,
Court of Himachal Pradesh,
Registrar General.

MUNICIPAL COUNCIL DHARAMSHAL (CONTROL AND REGULATION) OF MUCK DUMPING BYE-LAWS 2012

NOTIFICATION

Dated, 16th Furuary, 2013

No. 3175.—WHEREAS the Municipal Council Dharamshala after due publicity to enact/make the Muck Dumping Bye-Laws 2012 had invited objections from general public and private individuals/bodies/organizations etc. likely to be effected by these Bye-Laws/Rules with the

request/stipulation that the above stated Bye-Laws shall be considered by the House of Municipal Council Dharamshala for its final approval after the expiry of a specific period of 15 days from the date of their putting on the Notice board dated 19-12-2012.

AND WHEREAS subsequent upon the completion of the due process and necessary codal formalities no objections were received in the office of the Municipal Council Dharamshala.

NOW THEREFORE, the following Muck Dumping Bye-Laws 2012 made by Municipal Council Dharamshala in exercise of the powers conferred by Sections 216, 217 and Section 219 read with clause (y and zb) of sub section(1) of Section 202 of the Himachal Pradesh Municipal Act, 1994 (Act No. 13 of 1994) amended from time to time and their further adoption unanimously by the House of Municipal Council Dharamshala *vide* Resolution No. 346 Dated 07-12-2012, are hereby finally published in Rajpatra H. P. (Extraordinary) for the information of general public namely:—

“Municipal Council Dharamshala (Control and Regulation) of Muck Dumping Bye-Laws, 2012.”

Preliminary

1. Short title, commencement and application.—(i) These Bye-Laws may be called “Municipal Council Dharamshala (Control & Regulation) of Muck Dumping Bye- Laws, 2012”.

(ii) These Bye-Laws shall come into force from the date of their publication in Rajpatra (extraordinary) Himachal Pradesh.

(iii) These Bye-Laws shall be applicable within the jurisdiction of Municipal Council Dharamshala as defined from time to time.

2. Definitions.—(i) In these Bye-Laws, unless the context otherwise requires:—

- (a) “Act” means the Himachal Pradesh Municipal Act, 1994 (Act No. 13 of 1994 as amended from time to time.
- (b) “Applicant”—means any person applying for permission for dumping of Muck in the authorized dumping places as specified by the Municipal Council Dharamshala.
- (c) “Authorized Officer”—means any Officer/official duly authorized by the Municipal Council Dharamshala under these Bye-Laws.
- (d) “Muck”—includes earth or stone, material of any description or any rubbish or polluted or obnoxious matter or Debris including building , construction waste.
- (e) “Place”—means authorized site specified by the Municipal Council Dharamshala for dumping of Muck.
- (f) “Judicial Magistrate First Class”—means the Judicial Magistrate having jurisdiction over the area of Municipal Council Dharamshala under the Act.
- (g) words and expressions used in these Bye-Laws but not defined herein shall have the meaning respectfully assigned to them under Act.

3. Prohibition of Muck Dumping.—(i) no person, either himself or through another, shall knowingly or otherwise throw or cause to be thrown any kind of Muck in any place other than the place specified by the Municipal Council Dharamshala for dumping of Muck within its area.

(ii) any person found dumping the Muck illegally, unauthorizedly and without any permission shall be liable for penalty under these Bye-Laws and the vehicle or tools used for such dumping shall be impounded.

4. Procedure for Application and grant of permission.—(i) applicant or the person concerned intended to commence the construction within the area of Municipal Council Dharamshala shall in writing submit detailed estimate of Muck to be generated from the plot/construction site to the Municipal Council Dharamshala on the prescribed proforma annexed with these Bye-Laws as appendix-I at the time of submission of their building map/plan for sanction. The building plan without such estimate shall not be considered for sanction.

(ii) the estimate submitted by the applicant shall be verified by the concerned official after inspection and thereafter the carriage of muck to be generated from the plot/ construction site shall be assessed for raising the bill and for according necessary permission in favour of the applicant.

(iii) The permission for dumping of debris shall be accorded only after obtaining receipt of the amount deposited by the applicant in the Municipal Council Dharamshala on this account.

(iv) the place for dumping of muck shall be communicated to the applicant by the Municipal Council Dharamshala authorities in writing and the name of the place/site for dumping of debris by the applicant shall also be mentioned in their building sanction letter. Further intimation of the same shall be given to the concerned official or to the concerned agency or the contractor hired or engaged by the Municipal Council Dharamshala for managing the dumping site.

(v) dumping transportation of the muck, a person shall have to carry the original permission a copy of which shall be affixed on the windscreen of the vehicle and the same shall have to be shown to the authorized Officer of the Municipal Council Dharamshala at the time of inspection.

(vi) there shall be a restriction on movement of the vehicle carrying Muck after the sun set and before sun rise. The normal timings for dumping the Muck in the dumping site shall be between 9.00 A. M. to 5.00 P. M. However, in the case of exigencies, the Municipal Council Dharamshala may in writing relax such restrictions.

(vii) no one shall be permitted to carry the digging and excavation of plot or land after sun set and before sun rise but the Municipal Council Dharamshala in the large public interest or in the case of emergent situation may relax such imposition/restrictions on receiving written request from the applicant or the concerned agency or the authority interested in this regard.

(viii) the person after obtaining the sanction of building map from the competent authority or before raising the construction at site is required to install a painted board of size of 3feet x 2feet indicating therein the number and date of the sanction commencement of construction and hours during which construction can be carried out, time when excavation can be done, name of dumping site allotted to the applicant for the purpose of dumping muck, nature of sanction, the area of construction sanctioned on each floor and the telephone number of the Office/control room set up by the Municipal Council Dharamshala for entertainment of complaints etc.

(ix) the Municipal Council Dharamshala shall prescribe the condition relating to the applicant of muck generation from the plot, grant of sanction for muck disposal and condition relating to affixing of board at site giving therein the detail as mentioned in clause (viii) at the time of grant of building sanction.

5. Rate for dumping of Muck-the following rates shall be applicable for dumping of Muck in the specified places.

(i) Manual	Rs. 10/- Per load
(ii) Mule	Rs. 20/- Per mule
(iii) Pick up	Rs. 300/- per pickup

(iv) Tipper light duty	Rs. 700/- per tipper
(v) Tipper Heavy duty/truck	Rs. 1200/- per tipper/truck.

an increase of 10% these rates shall be applicable after every financial year which shall be notified by the Municipal Council Dharamshala.

6. Duties and responsibilities of person concerned.—(i) it shall be the duty and responsibility of owner to make available all the sanction/permission granted by the competent authority to the person so hired or engaged by him for dumping of Muck in a specified place as specified by the Municipal Council Dharamshala.

(ii) whosoever is found dumping Muck other than the place specified by the Municipal Council Dharamshala, the owner or the person caught dumping the Muck shall be liable jointly for penalty under these Bye-Laws.

(iii) at the time of transportation of Muck, the person concerned shall make available the permission to the inspecting staff at the time of inspection of vehicle without causing any hindrance.

7. Impounding of vehicle.—(i) the authorized officer or the police establishment of the Municipal Council Dharamshala in this behalf either on the information received by himself or through other source shall immediately on receiving such information may stop and inspect the vehicle carrying muck for the purpose of ascertaining the required permission at any point of time and impound the same if found violating the provision of these Bye-Laws.

(ii) the vehicle shall only be released in case the registered owner of the vehicle applies for compounding of offences under these Bye-Laws.

(iii) the official impounding the vehicle shall immediately report in writing about the impounding of vehicle to the authorized officer/ official and keep the same in custody at the place designated by the Municipal Council Dharamshala till it is not released to the registered owner. The halt charges of the vehicle at such designated place shall be levied at the rate of Rs 1000.00 per day payable by registered owner to the Municipal Council Dharamshala in cash or through demand draft.

8. Compounding of offences—all the offences punishable under these Bye-Laws may, before, the institution of prosecution, be compounded by such officer as may be authorized by the Municipal Council Dharamshala or Executive Officer in this behalf, on payment of such sum as may be specified by such officer under these Bye-Laws.

9. Offences to be tried summarily—the offences which are not compounded shall be tried in a summary manner by the Judicial Magistrate First Class of the concerned Municipal area under section 260 of the code of Criminal Procedure.

10. Penalty.—(i) whosoever, is guilty of dumping Muck other than the place specified/notified by the Municipal Council Dharamshala, the rate of penalty shall be ten times at the first instance, twenty times at the second instance and for the third instance or thereafter the amount of penalty shall be thirty times of the actual rate of dumping as fixed by the Municipal Council Dharamshala in respect of the class and make of vehicle as defined in Clause 5 of these Bye-Laws.

(ii) in case of repeated violation, in addition to penalty as specified above, owner at whose instance the construction/excavation work is carried and is found dumping the Muck illegally or without the permission of the competent authority as the case may be, shall also be liable for

disconnection of water, electricity and other civic amenities and the concerned Officer/official may request the competent authority for withdrawal of recognition and registration if any granted in their favour including withdrawal of building sanction granted in favour of the owner concerned.

By order,
-Sd-
Executive Officer,
Municipal Council Dharamshala.

NAGAR PANCHAYAT RAJGARH

(CONTROL AND REGULATION) OF MUCK DUMPING BYE-LAWS, 2013

NOTIFICATION

Dated, 1st May, 2013

No. 284-92.—The following Muck Dumping Bye-Laws, 2013 made by the N.P. RAJGARH in the exercise of the power conferred by section 216, 217 and section 219 read with clause (v and zb) of sub section (1) of section 202 of Himachal Pradesh Municipal Act 1994 (Act No.13 of 1994) as amended from time to time are hereby published in Rajpatra, Himachal Pradesh (extraordinary) for the information of general public and notice is hereby given that the said draft bye laws shall be considered by the NP. After expiry of period of 15 days from the date of its publication in the Rajpatra, Himachal Pradesh.

If any person, likely to be affected by these draft bye laws has any objection(s) against these draft rules, he may send the written objection to the SECRETARY within the aforesaid period.

Objections, if any, received within the period as prescribed above, shall be taken into consideration by the NP. Rajgarh before finalizing these bye laws namely:—

“NP.RAJGARH (Control and Regulation) of Muck Dumping Bye laws 2013”

Preliminary

1. Short title, commencement and application.—(i) These bye laws may be called, “NP. RAJGARH (Control and Regulation) of Muck Dumping Bye Laws 2013” .

(ii) These bye laws shall come into force from the date of their publication in the Rajpatra (Extraordinary) Himachal Pradesh.

(iii) These bye laws shall be applicable within the jurisdiction of NP. RAJGARH as defined From time to time.

2. Definition.—(i) In these bye laws, unless the context otherwise requires.

(a) “Act”—means the Himachal Pradesh Municipal Act, 1994 (Act No.13 of 1994) as amended from time to time.

(b) “Applicant”—means any person applying for permission for dumping of muck in authorized dumping place as specified by the NP.

- (c) "Authorized Officer"-means any officer/official duly authorized by the NP.Rajgarh under these bye laws.
- (d) "Muck"-includes earth or stone, material of any description or any rubbish or polluted or obnoxious matter or Debris including building construction waste
- (e) "Place"-means authorized site specified by the NP. Rajgarh for the dumping of muck.
- (f) Judicial magistrate first class"- means the Judicial Magistrate having jurisdiction over the area of N.P. Rajgarh under the Act.
- (g) Words and expressions used in these Bye –Laws but not defined here in shall have the meaning respectfully assigned to them under the Act.

3. Prohibition on Muck Dumping.—(i) No person, either by himself or through another shall knowingly or otherwise throw or cause to be thrown any kind of Muck in any place other than the place specified by the NP Rajgarh for dumping of muck within their area.

(ii) Any person found dumping the muck illegally, unauthorized and without any permission shall be liable for penalty under bye-laws and he vehicles or tools used for such dumping shall be impounded.

4. Procedure for Application and grant of permission.—(i) Applicant or the person concerned intended to commence the construction within the area of the NP. shall in writing submit detailed estimate of Muck to be generated from the plot/construction site to the NP on the prescribed Performa annexed with these bye-laws as appendix-1 at the time of submission of their building map/plan for sanction the building plan without such estimate shall not be considered for sanction. However in the case of repair of building or in the case where no planning permission is required the permission for dumping debris shall obtain from the NP. Authorities by moving an application mentioning therein the full particulars of the applicant of the applicant.

(ii) The estimate submitted by the applicant shall be verified by the concerned official after spot inspection and thereafter shall be sent to Secretary/Junior Engineer Nagar Panchayat for raising the bill and for according necessary permission in favour of applicant.

(iii) The permission for dumping of debris shall be accorded only after obtaining the receipt of the amount to be deposited by the applicant in the N.P. on this account.

(iv) The place for dumping of muck shall be communicated to the applicant by the NP. authority in writing and the name of place/area for dumping and name of the authority shall also be mentioned in their building sanction letter further intimation of the sanction shall also be given to junior engineer/sanitary inspector department of the NP. or to the concerned agency or the contractor hired or engaged by the N.P. for managing the dumping site.

(v) During transportation of the muck a person shall have to carry the original permission. A copy of which shall be affixed on the wind screen of the vehicle and the same shall have to be shown to the authorized officer of the N.P. at the time of inspection .However in case of manual transportation of debris the person carrying the same shall have to show the original sanction to the inspecting staff /authorized officer at the time of inspection.

(vi) There shall be a restriction on the movement of the vehicles carrying muck after the sun set and before the sun rise the normal timing for dumping muck in the dumping site will be between 7.00am to 6.00 pm. However in case of exigencies and in view of traffic regulations in the town in the area the NP. may in writing relax such timings.

(vii) No one shall be permitted to carry the digging and excavation of plot or land after sun set and before sun rise but the NP. in larger public interest or in the case of emergent circumstances

may relax such imposition /restrictions on receiving written request from the applicant or the concerned agency or the authority interested in this regard.

(viii) The person after obtaining the sanction of building map from the competent authority or before raising the construction at site is required to install a painted board of size 3'x2' indicating there in the number and date of sanction ,commencement of construction and hours during which construction can be carried out time when excavation can be done, name of dumping site allotted to the applicant for the purpose of dumping muck ,nature of sanction the area of construction sanctioned on each floor and telephone number of the control room set by the N.P .for entertainment of complaints etc.

(ix) The engineering branch of the Nagar Panchayat shall prescribed the conditions relating to the application of muck generation from the plot ,grant of sanction for muck disposal and condition relating to affixing of board at site giving therein the detail as mentioned in clause (viii) at the time of grant of building sanction.

5. Rates for dumping of muck.—the following rates shall be applicable for dumping of muck in the specified places.

(i) Per cement bag	Rs.1.00/-Per Bag
(ii) Pickup	Rs.50/- per pickup
(iii) Tipper light duty	Rs.150/- per tipper
(iv) Tipper heavy duty/truck	Rs.300/- per tipper/truck
(v) Manual	Rs. 5/- per bag
(vi) Mule	Rs. 10/- per

An increase of 10% on the rates shall be applicable after every financial year which shall be notified by the Nagar Panchayat.

6. Duties and responsibilities of applicant/owner.—(i) it shall be the duty and responsibility of the owner o make available all the sanctions/permissions granted by the competent authority to the persons so hired or engaged by him for dumping of muck in the place specified by the Nagar Panchayat.

(ii) Whosoever is found dumping muck at a place other than the places and in contravention of the conditions specified by the NP., the owner and the person caught dumping the muck shall be liable jointly for penalty under these bye laws.

(iii) At the time of transportation of muck the person concerned shall make available the permission to the inspecting staff at the time of inspection of vehicle without causing any hindrance.

7. Impounding of vehicle.—(i) The authorized officer of the police establishment of the NP. either on the information received by himself or through any other source immediately on receiving such information may stop and inspect the vehicle carrying muck for the purpose of ascertaining the the required permission at any point of time and impound the same if found violating the provision of these bye -laws.

(ii) The vehicle shall only be released in case the registered owner of the vehicle applies for compounding of offence(s) under these Bye-Laws.

(iii) the official impounding the vehicle shall immediately report to this effect in writing to Secretary/assistant engineer/Junior Engineer of N.P. and keep the same in custody at place

designated by the NP. till it is not released to the registered owner. The halt charges of this vehicle at such designated place shall be levied @ Rs. 500/- per day payable by registered owner to the NP. in cash or through demand draft.

8. Compounding of offences.—All the offences published under these Bye- Laws may before the institution of prosecution be compounded by such officer as may be authorized by the NP. or its Secretary in this behalf, on payment of such sum as may be specified by such officer under such Bye- Laws.

9. Offences to be tried summarily.—the offences which are not compounded shall be tried in a summary manner by the special Judicial Magistrate first class of the Municipal Council under section 383 of the Himachal Pradesh Municipal act 1994 read with section 260 of the code of criminal procedure, 1973.

10. Penalty.—(i) Whosoever, is guilty of dumping muck at a place other than the place (s) specified/notified by the municipal council the rate of penalty shall be three times at the first instance, five times at the second instance and for the third instance or thereafter the amount of penalty shall be ten times of the actual rate of dumping as fixed by the municipal council as per clause 5 of the Bye –Laws .

(ii) In case of repeated violation in addition to penalty as specified above ,the owner at whose instance the construction/excavation work is carried out and is found dumping the muck illegally or without the permission of the competent authority, as the case may be shall also be liable for disconnection of water, electricity and other civic amenities and the Junior Engineer or Sanitary Inspector may request the competent authority for withdrawal of recognition and registration if any granted in his/her favour including withdrawal of building sanction granted in favour of the owner concerned.

By order,
Secretary,
Nagar Panchayat Rajgarh.

APPENDIX-1 (See Bye-laws 4(i))

Performa for estimation of muck generation

1. Name of the applicant of the Plot/land/project
2. Area and Kh. No. of the Plot/land/project
3. Location of the Plot/land/project
4. Whether owner or builder or Otherwise please specify.

5. Estimated quantity of muck
To be generated (quantity
Must be specified in cubic
Metres) along with estimate
duly signed by the authorized
person

Signature,

(Name and address of the applicant).

Date : 1st May, 2013

Place : Rajgarh

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 17th April, 2013

No: Sharm (A) 7-1/2005 (Award) Loose D/Shala.—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Dharamshala of the following cases on the website of Labour & Employment Department:—

Sr. No:	Case No:	Title of the Case	Date of Award
1.	353/12	Smt./Shri Sunil Kumar V/S Dr. Rajinder Parsad Medical.	25-2-2013
2.	App. No. 79/12 Under Ref: No.150/2006	E.E. HPPWD, Joginder Nagar. V/S Sukh Dev	25-2-2013
3.	App.No.80/12 Under Ref:No.110/2006	E.E. HPPWD, Joginder Nagar. V/S General Secretary, Himshakti.	25-2-2013
4.	Appt.No.81/12 Under Ref:No.160/2006.	E.E., HPPWD, Joginder Nagar V/S Vidhya Devi	25-2-2013
5.	262/2010	Subhash V/S S.O. Dharamshala	25-2-2013
6.	227/2010	Pushpa Sharma V/S B.D.O. Dharamshala	25-2-2013
7.	198/2012	Sewa Ram V/S E.E.HPPWD, Killer	25-2-2013
8.	201/2012	Kehar Singh V/S -do-	25-2-2013
9.	247/2012	Budhi Ram V/S -do-	25-2-2013
10.	112/2011	Auran Kumar V/S E.E. I & PH Dalhousie	25-2-2013
11.	74/2012	Rajesh Kumar V/S Factory Manager, M/s Saber	27-2-2013
12.	75/2012	Kewal Krishan V/S -do-	27-2-2013
13.	78/2012	Harish Kumar V/S -do-	27-2-2013
14.	153/2011	Mangat Ram Vs -do-	27-2-2013
15.	69/2011	Parveen Kumar V/S Managing Director, Jackson	1-3-2013
16.	381/2012	Kishori Lal V/S E.E.,HPPWD Joginder Nagar	1-3-2013
17.	270/2012	Hiramani V/S D.F.O Sunder Nagar	1-3-2013

18.	271/2012	Meen Chand V/S -do-	1-3-2013
19.	272/2012	Kishore Kumar V/S -do-	1-3-2013
20.	273/2012	Jagdish Kumar Vs -do-	1-3-2013
21.	234/2012	Bir Singh Vs The Conservation of Forest Kullu	5-3-2013
22.	235/2012	Giru Ram V/S -do-	5-3-2013
23.	237/2012	Tara Devi Vs -do-	5-3-2013
24.	245/2010	Netar Singh V/S D.F.O Wild Life kullu	6-3-2013
25.	70/2011	Satish Kumar V/S Horticulture Development Off.	11-3-2013
26.	139/2007	Pyar Singh V/S Agriculture Engineer	11-3-2013
27.	138/2007	Kuldeep Singh V/S -do-	11-3-2013
28.	91/2010	Mahesh Kumar V/S M/S Steel Automobile	11-3-2013
29.	33/2010	Rattan Lal V/S -do-	11-3-2013
30.	01/2010	Pawan Kumar V/S E.E. I & PH Lahaul	12-3-2013
31.	20/2013	Desh Raj V/S E.E. HPPWD, Dharampur	12-3-2013
32.	82/2013	Inder Singh V/S E.E. HPSEB, Mandi	15-3-2013
33.	89/2010	Dagu Ram V/S D.F.O. Suket	15-3-2013
34.	228/2012	Rajesh Kumar V/S Managing Director, M/S Fewa	16-3-2013
35.	33/2011	Dhani Ram V/S D.F.O Bilaspur	18-3-2013
36.	434/2009	Jitender Singh V/S Chairman Ex. Serviceman Corp.	18-3-2013
37.	79/2012	Pradhan Chand V/s Temple Officer Brijeshwari	20-3-2013
38.	168/2010	Subash Chand V/S E.E. HPPWD, Baijnath	20-3-2013
39.	108/2012	Balam Ram V/S E.E. HPPWD J/Nagar	26-3-2013
40.	127/2012	Thakur Singh V/S -do-	26-3-2013
41.	124/2012	Labh Singh V/s -do-	26-3-2013
42.	118/2012	Mani Ram V/S -do-	26-3-2013
43.	122/2012	Sarwan Kumar V/S -do-	26-3-2013
44.	120/2012	Parbhat Singh V/S -do-	26-3-2013
45.	121/2012	Rajesh Kumar V/S -do-	26-3-2013
46.	119/2012	Kaku V/S -do-	26-3-2013
47.	110/2012	Mohinder Singh V/S -do-	26-3-2013
48.	115/2012	Govind Ram V/S -do-	26-3-2013

By order,
Sd/-

Addl. Chief Secretary (Labour & Employment).

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 353/2012

Sh. Sunil Kumar s/o Sh. Kapoor Chand, Village-Dhugiyari, P.O. Tiara, Tehsil & Distt. Kangra, H.P. . .Petitioner.

Versus

1. Principal, Dr. Rajender Parsad Govt. Medical College, Tanda, Distt. Kangra, H.P.
2. Sh. Sandeep Ohri, Mess Contractor, c/o the Principal, Dr. Rajender Parsad Govt. Medical College, Tanda Distt. Kangra, H.P. . *Respondents.*

25-02-2013 Present: None for the petitioner.

Sh. Soham Kaushal, A.D.A. for the respondent No.1.

Sh. Sandeep Ohri (respondent No.2) with Sh. Dheeraj Sharma, Adv.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner/claimant. He and his ld. csl. are absent despite knowledge. It is already 2.30 P.M. Ld. csl. for the respondent No.2 has brought to the notice of this Court that the entire dues have already been paid to the petitioner/claimant by way of a demand draft because of which he is not interested to pursue the matter. The copy of the demand draft dated 19-06-2010 has also been placed on the file by the ld. csl. for the respondent No.2. Statement of claim/demand not filed till date.

2. Such being the situation, I have no hesitation to conclude that the petitioner is not interested to prosecute the lis. Consequently, he is not entitled to any relief. The termination of the services of the petitioner by the respondents is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

App: 79/12

The Executive Engineer (B&R) Division HPPWD, Joginder Nagar District Mandi, H.P.

Vs

Sh. Sukh Dev s/o Sh. Khampa Ram, r/o Village Bharyara, P.O. Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P. & others.

25-02-2013 Present: Sh. Soham Kaushal, A.D.A. for the applicant/Executive Engineer (B&R), HPPWD Division Joginder Nagar.

Sh. N.L. Kaundal, A.R. for the respondent.

In view of the averments made in the application and 'no objection' of the other side coupled with Section 36-A of the Industrial Disputes Act, 1947 (14 of 1947) as well as Rule 31 of the Industrial Disputes Rules, 1974 framed by the Labour Department, Government of Himachal Pradesh, the instant application is allowed. The words "Their seniority shall be reckoned from their initial dates of engagement" figuring in para No.18 of the Award dated 28-06-2011 passed by this Court in Reference No.150/2006 titled as Sh. Sukh Dev and others –vs- The Executive Engineer (B&R) HPPWD Division, Joginder Nagar, Distt. Mandi, H.P. are ordered to be deleted. In place of these words, the following words shall be substituted "the workmen shall be eligible for regularisation on completion of 8/10 years of continuous service as per the prevailing policy of the Government of Himachal Pradesh."

Parties to bear their own costs.

The application stands disposed of in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after completion so as to be tagged with the main matter.

By order,
Sd/-

*Announced: Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

App: 80/12

The Executive Engineer (B&R) Division HPPWD, Joginder Nagar District Mandi, H.P.

Vs

The General Secretary, Himshakti PWD Karamchari Sangh, Joginder Nagar, Distt. Mandi, H.P.

25-02-2013 Present: Sh. Soham Kaushal, A.D.A. for the applicant/Executive Engineer (B&R), HPPWD Division Joginder Nagar.

Sh. N.L. Kaundal, A.R. for the respondent.

In view of the averments made in the application and 'no objection' of the other side coupled with Section 36-A of the Industrial Disputes Act, 1947 (14 of 1947) as well as Rule 31 of the Industrial Disputes Rules, 1974 framed by the Labour Department, Government of Himachal Pradesh, the instant application is allowed. The words "Their seniority shall be reckoned from their initial dates of engagement" figuring in para No.18 of the Award dated 28-06-2011 passed by this Court in Reference No.150/2006 titled as Sh. Sukh Dev and others –vs- The Executive Engineer (B&R) HPPWD Division, Joginder Nagar, Distt. Mandi, H.P. are ordered to be deleted. In place of these words, the following words shall be substituted "the workmen shall be eligible for regularisation on completion of 8/10 years of continuous service as per the prevailing policy of the Government of Himachal Pradesh."

Pradesh, the instant application is allowed. The words “Their seniority shall be reckoned from their initial dates of engagement” figuring in para No.16 of the Award dated 02-11-2010 passed by this Court in Reference No.110/2006 titled as The General Secretary, Himshakati PWD Karamchari Sangh Jogindernagar, Distt. Mandi, H.P. –vs- The Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar, Distt. Mandi, H.P. are ordered to be deleted. In place of these words, the following words shall be substituted “the workmen shall be eligible for regularisation on completion of 8/10 years of continuous service as per the prevailing policy of the Government of Himachal Pradesh.”

Parties to bear their own costs.

The application stands disposed of in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after completion so as to be tagged with the main matter.

By order,

Sd/-

*Announced: Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

App: 81/12

The Executive Engineer (B&R) Division HPPWD, Joginder Nagar District Mandi, H.P.

Vs

Smt. Vidya Devi w/o Sh. Puran Chand, r/o Village Padain, P.O. Sainthal, Tehsil Joginder Nagar, Distt. Mandi H.P. & others.

25-02-2013 Present: Sh. Soham Kaushal, A.D.A. for the applicant/Executive Engineer (B&R), HPPWD Division Joginder Nagar.

Sh. N.L. Kaundal, A.R. for the respondent.

In view of the averments made in the application and ‘no objection’ of the other side coupled with Section 36-A of the Industrial Disputes Act, 1947 (14 of 1947) as well as Rule 31 of the Industrial Disputes Rules, 1974 framed by the Labour Department, Government of Himachal Pradesh, the instant application is allowed. The words “Their seniority shall be reckoned from their initial dates of engagement” figuring in para No.18 of the Award dated 28-06-2011 passed by this Court in Reference No.160/2006 titled as Smt. Vidya Devi and others –vs- The Executive Engineer (B&R) HPPWD Division, Joginder Nagar, Distt. Mandi, H.P. are ordered to be deleted. In place of these words, the following words shall be substituted “the workmen shall be eligible for regularisation on completion of 8/10 years of continuous service as per the prevailing policy of the Government of Himachal Pradesh.”

Parties to bear their own costs.

The application stands disposed of in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after completion so as to be tagged with the main matter.

By order,

Sd/-

*Announced: Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 74/12

Sh. Rajesh Kumar s/o Sh. Chaman Lal, r/o Village & P.O. Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. . *Petitioner.*

Versus

The Factory Manager, M/s Saber Papers Limited, Village & P.O. Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. . *Respondent.*

27-02-2013 Present: Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Yogesh Kumar, Factory Manager, for the respondent.

Today again no PW is present despite the grant of the last opportunity. Even the petitioner/claimant has not turned up for his examination as a witness in support of his claim. The perusal of the file discloses that the issues in this case were framed on 02-07-2012. Thereafter, more than three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. As already mentioned, no PW (including the petitioner) is present today despite the grant of the last opportunity. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. Accordingly, his evidence is closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim. I have no hesitation to conclude that he is not entitled to any relief. The claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondent w.e.f. 12-08-2010 is held to be legal and justified. Parties to bear their own costs. 3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

By order,

Sd/-

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 75/12

Sh. Kewal Krishan s/o Sh. Rakha Ram, r/o Village & P.O. Gondpur Bulla, Tehsil Haroli,
Distt. Una, H.P. . .Petitioner.

Versus

The Factory Manager, M/s Saber Papers Limited, Village & P.O. Gondpur Bulla, Tehsil
Haroli, Distt. Una, H.P. . .Respondent.

27-02-2013 Present: Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Yogesh Kumar, Factory Manager, for the respondent.

Today again no PW is present despite the grant of the last opportunity. Even the petitioner/claimant has not turned up for his examination as a witness in support of his claim. The perusal of the file discloses that the issues in this case were framed on 02-07-2012. Thereafter, more than three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. As already mentioned, no PW (including the petitioner) is present today despite the grant of the last opportunity. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. Accordingly, his evidence is closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim. I have no hesitation to conclude that he is not entitled to any relief. The claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondent w.e.f. 12-08-2010 is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 78/12

Sh. Harish Kumar s/o Sh. Ram Swaroop, r/o Village & P.O. Gondpur Bulla, Tehsil Haroli,
Distt. Una, H.P. . .Petitioner.

Versus

The Factory Manager, M/s Saber Papers Limited, Village & P.O. Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. . *Respondent.*

27-02-2013 Present: Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Yogesh Kumar, Factory Manager, for the respondent.

Today again no PW is present despite the grant of the last opportunity. Even the petitioner/claimant has not turned up for his examination as a witness in support of his claim. The perusal of the file discloses that the issues in this case were framed on 02-07-2012. Thereafter, more than three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. As already mentioned, no PW (including the petitioner) is present today despite the grant of the last opportunity. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. Accordingly, his evidence is closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim. I have no hesitation to conclude that he is not entitled to any relief.

The claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondent w.e.f. 12-08-2010 is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 153/2011

Sh. Mangat Ram s/o Sh. Achhar Ram, r/o Village & P.O. Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. . *Petitioner.*

Versus

The Factory Manager, M/s Saber Papers Limited, Village & P.O. Gondpur Bulla, Tehsil Haroli, Distt. Una, H.P. . Respondent.

27-02-2013 Present: Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Yogesh Kumar, Factory Manager, for the respondent.

Today again no PW is present despite the grant of the last opportunity. Even the petitioner/claimant has not turned up for his examination as a witness in support of his claim. The perusal of the file discloses that the issues in this case were framed on 02-07-2012. Thereafter, more than three opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. As already mentioned, no PW (including the petitioner) is present today despite the grant of the last opportunity. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. Accordingly, his evidence is closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim. I have no hesitation to conclude that he is not entitled to any relief. The claim petition preferred by him is dismissed. The termination of the services of the petitioner by the respondent w.e.f. 24-07-2010 is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 69/2011

Sh. Parveen Kumar s/o Gurbachan Singh, r/o Village Baintloo, P.O. Bandi, Tehsil Shahpur, Distt. Kangra, H.P. . Petitioner.

Versus

The Managing Director, Jackson Laboratories Private Limited, Plot No. 56 & 61, Industrial Area, Phase-III, Sansarpur Terrace, District Kangra, H.P. . Respondent.

01-03-2013 Present: Petitioner with Sh. S.K. Sharma, Adv.

Sh. Varun Samra, Plant Manager of the respondent with Sh. B.C. Katoch, Adv. vice csl.

The case is listed for the evidence of the respondent today but the parties have compromised. Statements recorded separately. The same are reproduced below verbatim for ready reference:

“Statement of Sh. Varun Samra s/o Sh. Vijay Kumar age 32 Yrs, Project Manager, Jackson Laboratory Pvt. Ltd. Plot No. 56-61 Industrial Area Phase-3 Sansarpur Terrace, Distt. Kangra, H.P.

On. S.A
01-03-2013

हमने वादी को नौकरी से कभी न निकाला । उसने नौकरी खुद छोड़ी । फिर भी हम उसे दोबारा नौकरी पर रखने को तैयार हैं । वादी फैक्ट्री में 04.3.2013 को सुबह 9 बजे अपनी duty पर report करे । वह seniority o continuity in service पाने का हकदार होगा । वादी को नौकरी छोड़ने की तारीख से यानि 01.5.2010 से joining की तारीख यानि 04.3.2013 तक के कोई wages न दिए जाएंगे । Record अनुसार वादी ने हमारे पास पहले जितने दिन भी काम किया उसके Provident Fund आदि के पैसे उसे 31.3.2013 तक cheque द्वारा अदा कर दिए जाएंगे । Claim petition को मन्जूर करने में कोई एतराज न है ।

R O & AC

P.J.
01-03-2013

ब्यान श्री प्रवीन कुमार s/o श्री गुरवचन सिंह आयु 39 वर्ष (वादी)

On. S.A
01-03-2013

व्यान श्री वरुण सामरा सुन लिया है इससे सहमत हूँ । मैं 04.03.2013 को सुबह 9 बजे Factory में अपनी duty पर हाजर हो जाऊंगा अगर मैं उस दिन गैरहाजिर रहा तो मुझे दोबारा प्रतिवादी के पास नौकरी पाने का कोई हक न होगा और न ही मैं P.F. आदि को claim करूंगा । मैं 01.05.2010 से 03.3 2013 तक के wages को entitled न हूंगा क्योंकि मैंने इस दौरान प्रतिवादी कम्पनी में काम न किया है । समझौता हो गया है इस अनुसार फैसला कर दिया जाए ।

R O & AC

P.J.
1-03-2013”

2. The claim petition is allowed in part/disposed of in the aforesaid terms.

Parties to bear their own costs.

3. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

4. File after due completion be consigned to the Records.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 381/2012

Sh. Kishori Lal s/o Sh. Sant Ram, r/o Village Jhulgan, P.O. Khadar, Tehsil Joginder Nagar,
Distt. Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, HPPWD Division Joginder Nagar, Distt. Mandi, H.P. . *Respondent.*

01-03-2013 Present: None for the petitioner.

Sh. Soham Kaushal, A.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner/claimant. The perusal of the previous order dated 5-01-2013 passed by this Court reveals that the summons sent for the service of the petitioner were received back unserved with the report that he had died. The respondent was directed to place on record the details of the legal representatives, if any, of the deceased petitioner. A copy of the order was ordered to be sent to the Labour Inspector-cum-Conciliation Officer, Mandi for information and necessary action at his end. A letter dated 18-2-2013 has been received from the Labour Inspector, Mandi. Its perusal discloses that the Labour Inspector had contacted Smt. Simra Devi w/o Sh. Kishori Lal(deceased petitioner) on phone and informed her about today's date of hearing. The Labour Inspector had also requested Smt. Simra Devi to appear before this Court today to put forward her claim. She has not turned up despite knowledge. It is already 2.30 P.M. Ld. A.D.A. has placed on record an affidavit purported to have been sworn by Smt. Simra Devi, the wife of the deceased workman. In this affidavit, it has been mentioned that in case the respondent/department employs her in place of her late husband, she will withdraw the case and will not prosecute the matter further. Ld. A.D.A. states at bar that as per the instructions received by him from the respondent, the services of Smt. Simra Devi w/o late Sh. Kishori Lal will be engaged as a daily wager in place of her husband on or before 30-06-2013.

2. The reference is disposed of in the aforesaid terms. The termination of the services of the deceased petitioner by the respondent from time to time is held to be legal and justified since no claim petition to the contrary has been preferred by his legal representatives who have not turned up despite service/knowledge. Parties to bear their own costs.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref: No. : 234/2012

Sh. Bir Singh s/o Sh. Paras Ram, r/o Village Lahinger, P.O. Khrihar, Tehsil and Distt. Kullu, H.P. . . . *Petitioner.*

Versus

The Conservator of Forests, Kullu Forest Circle, Kullu, District Kullu, H.P. . . . *Respondent.*

05-03-2013 Present: Petitioner with Sh. D.S. Thakur, Adv.

Sh. Sanjeev Katoch, D.D.A. for the respondent.

The case is listed for arguments today, but the ld. csl. for the petitioner has made the below given statement in the Court:—

“ I do not want to proceed with this reference/claim petition. It /they be dismissed as withdrawn. My client will issue fresh demand notice to the respondent for the redressal of his grievances.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref: No. : 235/2012

Sh. Giru Ram s/o Sh. Kalu Ram, r/o Village & P.O. Kharihar, Tehsil and Distt. Kullu, H.P. . . . *Petitioner.*

Versus

The Conservator of Forests, Kullu Forest Circle, Kullu, District Kullu, H.P. . .*Respondent.*

05-03-2013 Present: Petitioner with Sh. D.S. Thakur, Adv.

Sh. Sanjeev Katoch, D.D.A. for the respondent.

The case is listed for arguments today, but the ld. csl. for the petitioner has made the below given statement in the Court:—

“ I do not want to proceed with this reference/claim petition. It /they be dismissed as withdrawn. My client will issue fresh demand notice to the respondent for the redressal of his grievances.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)

Ref: No. : 237/2012

Smt. Tara Devi w/o Sh. Maghu Ram, r/o Village Pah, P.O. Kharihar, Tehsil and Distt. Kullu, H.P. . .*Petitioner.*

Versus

The Conservator of Forests, Kullu Forest Circle, Kullu, District Kullu, H.P. . .*Respondent.*

05-03-2013 Present: Petitioner with Sh. D.S. Thakur, Adv.

Sh. Sanjeev Katoch, D.D.A. for the respondent.

The case is listed for arguments today, but the ld. csl. for the petitioner has made the below given statement in the Court:—

“ I do not want to proceed with this reference/claim petition. It /they be dismissed as withdrawn. My client will issue fresh demand notice to the respondent for the redressal of her grievances.”

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref: No. : 245/2010

Sh. Netar Singh s/o Sh. Bhag Singh, r/o Village-kalangehar, P.O. Sudhar, Tehsil Padhar,
Distt. Mandi, H.P. *.Petitioner.*

Versus

1. The Divisional Forest Officer, Wild Life Division, Kullu, H.P.
2. The Divisional Forest Officer Joginder Nagar, Distt. Mandi, H.P. *. Respondents.*

06-03-2013 Present: Sh. Vipin Awasthy, Adv. csl. for the petitioner.

Sh. Sanjeev Katoch, D.D.A. for the respondents.

Sh. Roop Lal, Range Officer, Wild Life Barot is also present.

The case is listed for arguments today, but the ld. D.D.A on instructions received from the respondents states at bar that the petitioner never worked with the respondent No.2 viz. the Divisional Forest Officer, Joginder Nagar, Distt. Mandi in any capacity. He was employed by the respondent No.1 viz. the Divisional Forest Officer, Wild Life Division, Kullu who retrenched the services of the petitioner in the month of May, 2009. Ld. D.D.A. further states at bar that after May, 2009, no new/fresh hands have been employed by the respondent No.1 i.e. Divisional Forest Officer, Wild Life Division, Kullu. As and when any new/fresh hands are engaged, an opportunity of reemployment will be afforded to the petitioner by taking recourse to the provision of Section 25-H of the Industrial Disputes Act, 1947 (14 of 1947). In view of these facts, the ld. csl. for the petitioner states at bar that he does not want to proceed with the instant reference/claim petition. It/they be dismissed as withdrawn/ compromised. Ordered accordingly. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
4. Be consigned to the Records after due completion.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 70/2011

Sh. Satish Kumar s/o Sh. Amin Chand, r/o Village Machhi Bhawan, P.O. Jachh, Tehsil Nurpur, Distt. Kangra, H.P. *.Petitioner.*

Versus

The Horticulture Development Officer, Progeny-cum-Demonstration Orchard, (Horticulture Department), Jachh, Tehsil Nurpur, Distt. Kangra, H.P. *.Respondent.*

11-03-2013 Present: Petitioner/claimant in person. Sh. Subhash Chand, Horticulture Extension Officer, for the respondent with Sh. Sanjeev Katoch, D.D.A. Reply not filed. The parties have compromised. Statements recorded separately. The same are reproduced below verbatim for ready reference:

“Statement of Sh. Subhash Chand age 43 years, Horticulture Extension Officer, Jachh, Tehsil Nurpur, Distt. Kangra, H.P.

On. S.A

11-03-2013

हमने वादी को अनुबन्ध के आधार पर नियुक्ती दे दी है । वह करीब दो महिने से हमारे पास कार्यरत है । हम वादी को नौकरी से नियमानुसार ही जरूरत पड़ने पर निकालेंगे ।

R O & AC

P.J.
11-03-2013

Statement of Sh. Satish Kumar s/o Sh. Amin Chand age 36 years, r/o Vill. Machhi Bhawan, P.O. Jachh, Tehsil Nurpur, Distt. Kangra, H.P. (petitioner).

On. S.A

11-03-2013

उपरोक्त ब्यान श्री सुभाश चन्द सुन लिया है इससे सहमत हूँ । मैं यह औद्योगिक विवाद न चलाना चाहता हूँ समझौता हो गया है । विवाद दाखिल दफ्तर किया जावे । मैं 21. 09.2000 से अनुबन्ध पर लगने की तारीख तक के wages, seniority व continuity in service का हकदार न हूँगा । इस अनुसार विवाद का फैसला कर दिया जावे और मुझे दोबारा लगने की तारीख से seniority व continuity in service दी जावे ।”

R O & AC

P.J.

11-03-2013”

2. The claim petition /reference is disposed of in the aforesaid terms having been compromised. Parties to bear their own costs.

3. A copy of this Order /Award be sent to the appropriate Government for further necessary action at its end.

4. File after due completion be consigned to the Records.

Announced:

By order,

Sd/-

*Presiding Judge,**Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 20/2013

Sh. Desh Raj s/o Sh. Sunkoo Ram, r/o Vill. & P.O. Sadhiot, Tehsil Sarkaghat, Distt. Mandi,
H.P. *.Petitioner.*

Versus

The Executive Engineer, HPPWD Division, Dharampur, District Mandi, H.P. *..Respondent.*

12-03-2013 Present: Sh. N.L. Kaundal, A.R. and Sh. Vijay Kaundal, Adv., csl. for the petitioner.

Sh. Sanjeev Katoch, D.D.A. for the respondent.

File taken up today on request.

2. Ld. A.R. for the petitioner has made the below given statement in the Court:—

“My client Sh. Desh Raj has already been reengaged by the respondent/department. His services have also been regularized. The petitioner does not want to proceed with the reference. It be dismissed as withdrawn. The file be taken up today and disposed of.”

3. In view of the above noted statement, this reference is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is disposed of in the aforesaid terms.

5. A copy of this Order /Award be sent to the appropriate Government for further necessary action at its end.

6. File after due completion be consigned to the Records.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-
CUMINDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref: No. : 228/2012

Sh. Rajesh Kumar s/o Sh. Baldev Singh, r/o Daulatpur Chowk, Tehsil Amb, Distt. Una,
H.P. *Petitioner.*

Versus

The Managing Director, M/S Fewa Electrical Corporation, Hoshiarpur Road, Gagret, Tehsil
Amb, District Una, H.P. *Respondent.*

16-03-2013 Present: Petitioner with Sh. J.S. Rana, Adv.

Sh. S.P. Puri, Adv., csl. for the respondent.

The case is listed for arguments today but the parties have compromised. Statements recorded separately. The same are reproduced below verbatim for ready reference:

“Statement of Sh. S.P. Puri, Adv. for the respondent.

Date
16-03-2013

My client did not terminate the services of the petitioner on 03-11-2007 as alleged. Despite the said fact, my client is ready to reengage the services of the petitioner. He can report for duty on 01-04-2013 at 8.45 A.M. in the factory premises. He will be deputed for doing the Buff job which he was doing earlier.

The petitioner shall not be entitled to any seniority, continuity in service or back wages from the date of his alleged termination i.e. 03-11-2007 till his rejoining on 01-04-2013. The petitioner had left the service voluntarily earlier.

R O & AC

P.J.
16-03-2013

ब्यान श्री राजेश कुमार s/o Sh. Baldev Singh age 26 years, (वादी)

On. S.A
16-03-2013

ब्यान Sh. S.P. Puri, Adv. अधिवक्ता प्रतिवादी सुन लिया है । इससे सहमत हूँ । मैं 01.04.2013 को सुबह 8-45 बजे Factory esa duty पर report कर दूँगा । अगर उस दिन duty पर report न करूँ तो मैं प्रतिवादी के पास दोबारा नौकरी पाने का कोई हकदार न हूँगा । मैं अपनी कनजल पूरी ईमानदारी व निष्ठा से करूँगा । मैं factory premises में न ही cigarette/बीडी पीउंगा और न ही किसी प्रकार का नषा करके कनजल पर जाउगा । मैं अपने co-workers या management के साथ किसी किसम का कोई झगडा न करूँगा । समझौता हो गया है । यह औद्योगिक विवाद न चलाना चाहता हूँ । समझौता अनुसार मुकदमे का फैसला कर दिया जाए ।

R O & AC

P.J.
16-03-2013”

Ref: No. 228/2012

2. In view of the above noted statements, the claim petition is dismissed as withdrawn/compromised. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this order /Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Records.

Announced:

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 112/2011

Date of Institution : 27.8.2011

Date of Decision : 25.02.2013

Shri Arun Kumar s/o Shri Dev Brat Sharma Jagdish, r/o Village Bhatoli, P.O. Bathri, Tehsil Dalhousie, Distt. Chamba, H.P. . .Petitioner.

Versus

The Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) . . . *Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. D.P. Malhotra, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Arun Kumar S/O Sh. Dev Brat Sharma, R/O Village-Bhatoli, P.O. Bathri, Tehsil Dalhousie, Distt. Chamba, H.P. by the Executive Engineer, IPH Division Dalhousie, Distt. Chamba, (H.P.) w.e.f. 01.10.1998 is proper and justified, if not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the month of July, 1995. He worked continuously as such in Sub Division Banikhet. On 1st September, 1998, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him by the respondent nor any reason was assigned for the retrenchment. He had completed more than 240 days of continuous service in a block of 12 calendar months preceding the date of his termination i.e. 01.9.1998. At the time of the retrenchment of his services, the persons junior to him (petitioner) who are the favorites of the respondent were retained in service by the latter. He requested the respondent time and again to re-employ him, but in vain. The respondent has not re-engaged his services despite the availability of the work and the funds. Shri Sharwan Kumar s/o Shri Raghu Ram who is junior to him is still working with the respondent/department. He (petitioner) approached the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, Shimla, Bench at Dharamshala for the redressal of his grievances by instituting Original Application No. (D) 346/1999. The said Original Application was disposed of by the Hon'ble Administrative Tribunal per order dated 26.8.2004. It was held by the Hon'ble Administrative Tribunal that it has no jurisdiction to deal with the Original Application. He (petitioner) was given the liberty to approach the appropriate Court/Forum against the illegal termination. After that, a demand notice was served upon the respondent by him, but of no avail. He is entitled to the reengagement and regularization of his services. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“1. That the applicant kindly be ordered to be re-engaged on the same post of Beldar as at the time of his termination with continuity of service, back wages and consequential benefits.

2. That the services of the applicant be ordered to be regularized from the date of his completion of 240 days of service on his respective post of Beldar in regular pay scale of the post with arrears of pay allowance and consequential benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The petitioner is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily rated beldar. However, it has been pleaded that the petitioner was initially appointed in the month of August, 1995 and not July, 1995 (as mentioned in the claim petition). He worked for 143 days in the year 1995, 233 days in the year 1996, 237 days in the year 1997, 238 days in the year 1998, nil days in the year 1999 and 182 days in the year 2000 (up-to 14.11.2000). The mandays chart of the petitioner is annexure R-I. The services of the petitioner were never disengaged in the year 1998 as alleged. He used to attend to his duties intermittently and according to his sweet will. In the month of September, 1998, after working for 18 days, the petitioner finally abandoned the job despite the fact that the muster roll No.547 for whole month of September, 1998 (annexure R-II) was issued in his (petitioner's) name. The petitioner caused an irreparable loss to the department in the early execution of the work for which he was deployed. The petitioner willingly left the job in spite of the fact that the work was available. Assistant Engineer, I&PH Sub Division Banikhet requested the petitioner vide letters dated 22.10.1998 and 16.11.1998 to resume his duties, but without any success. As the petitioner did not report for duty despite the above noted letters, his conduct shows that neither he was interested to work nor he was in the need of the job. Presently, the work and the funds are not available with him (respondent). No person junior to the petitioner has been retained in service or engaged/re-engaged. Shri Sharwan Kumar is not working under him (respondent). No junior person has been appointed except in obedience to the judicial verdicts and on compassionate grounds. The petitioner did not complete 240 days of work in any year of his employment. He willingly left the service in the month of September, 1998. It stands admitted that the petitioner had preferred O.A. No.(D) 346/1999 before the Hon'ble Administrative Tribunal. The Hon'ble Administrative Tribunal vide interim order dated 23.3.2000 directed him (respondent) to re-engage the petitioner in the same capacity. In compliance to the orders of the Hon'ble Administrative Tribunal dated 23.3.2000, the petitioner was re-employed on 02.5.2000 and he worked for 182 days up-to 14.11.2000. Thereafter, the name of the petitioner figured in the labour which became surplus. Accordingly, his services were terminated w.e.f. November, 2000. No notice under Section 25-F of the Act was required to be issued to the petitioner since he had not completed 240 days of work in the preceding 12 months from the date of his retrenchment. The issue of termination of the petitioner w.e.f. November, 2000 has not been referred by the appropriate Government for adjudication to this Court. The claim of the petitioner is beyond the reference. The present industrial dispute has been raised by the petitioner at a belated stage i.e. in the year 2007. The petitioner is running a shop at village Bhatoli, Gram Panchayat Osal. He is gainfully employed. No provision of the Act has been flouted. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.

5. Per order dated 03.8.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 01.10.1998 is illegal and unjustified? . . .OPP
2. Whether the petition is not maintainable in the present form? . . .OPR
3. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? . . .OPR

4. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? . . . OPR
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part *vide* operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner, Shri Arun Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he does not remember as to whether he had joined the service in the month of July or August, 1995. He admitted that he served the respondent/department up-to the month of November, 2000. He denied that he left the service of his own in the month of September, 1998 and the muster roll for the entire month was issued in his favour. He also denied that the notices Marks-A and B (later on exhibited as Exts. RW1/D and E) were given to him by the respondent asking him to resume the work. He refuted that he used to remain absent from duty because of which he could not complete 240 days of work in any year of his employment. He admitted that Shri Sharwan Kumar is not serving under the respondent. He denied that since he voluntarily left the job, he is not entitled to the re-employment etc.

9. Conversely, Shri Des Raj Neharia, Executive Engineer, I&PH Division Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A submitted under Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the petitioner worked up-to 14.11.2000. He denied that the petitioner worked for 240 days in each and every year of his engagement. When the petitioner left the job, no notice was served upon him calling upon him to resume his duties. Even no departmental proceedings were initiated against the petitioner. He admitted that as per the orders of the Hon'ble Administrative Tribunal, the services of the petitioner were re-engaged in the year 2000. In the same year the services of the petitioner were terminated being surplus. 363 other workers were also terminated alongwith the petitioner. He admitted that the daily wagers are still serving under him.

10. Ex. PW1/B is the copy of the interim order dated 23.3.2000 passed by the Hon'ble Administrative Tribunal in O.A. (D) No. 346/1999, titled as Shri Arun Kumar versus State of Himachal Pradesh and others. It depicts that the respondents were directed to re-engage the petitioner in the same capacity in which he was working when his services were terminated.

11. Ex. PW1/C is the copy of the final order dated August 26, 2004 pronounced by the Hon'ble Administrative Tribunal in O.A. (D) No. 346/1999. It unfolds that the Original Application was disposed of by the Hon'ble Administrative Tribunal by holding that it has no jurisdiction to deal with the same.

12. Ex. RW1/B is the mandays chart relating to the petitioner.
13. Ex. RW1/C is the copy of the muster roll No. 547 from 01.9.1998 to 30.9.1998. It reveals that the petitioner worked up-to 19.9.1998 only and thereafter absented from his duties.
14. Ex. RW1/F is the seniority list of daily waged beldars working in I & PH Division Dalhousie as on 31.12.2000.
15. Ex. RW1/G is the seniority list of daily waged beldars working under I & PH Division, Dalhousie as on 31.12.2000, whose services were disengaged being surplus. It clarifies that as many as 369 beldars (including the petitioner) were retrenched being surplus. The name of the petitioner figures at serial No.87 of this list.
16. Ex. RW1/H is the copy of the demand notice dated 19.9.2007 served upon the respondent by the petitioner under Section 2-A of the Act.
17. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar in the month of August, 1995 and he worked as such up-to the month of September, 1998. The version of the petitioner is that on 01.10.1998, his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.
18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that the notices Exts. RW1/D and E allegedly sent by the respondent to the petitioner calling upon him to resume his duties were received by the latter. The copy of the despatch register has not been produced by the respondent to show that the notices Exts. RW1/D and E were actually sent to the petitioner. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.
19. Even if the petitioner served the respondent/department in the year 2000, the same is innocuous to his cause since admittedly the services of the petitioner were re-engaged by the respondent pursuant to the interim order dated 23.3.2000 the copy of which is Ex. PW1/B passed by the Hon'ble Administrative Tribunal in O.A. (D) No.346/1999.
20. The respondent has pleaded that in the month of November, 2000, the services of the petitioner were terminated alongwith the other labourers being surplus. Ex. RW1/G is the seniority list of the daily waged beldars whose services were disengaged by the respondent being surplus. As mentioned earlier, the name of the petitioner figures at serial No.87 of this list.
21. Mandays chart Ex. RW1/B depicts that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 01.10.1998 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.
22. The petitioner has placed on the record the copy of the Award dated 01.11.2012 rendered by this Court/Tribunal in Reference No.570/2008, titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie. While deciding the said reference, it was held by this Court that after 26.11.2000, new/fresh hands were engaged by the respondent. If the services of

the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner. The action of the respondent thus contravenes the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

23. This issue is decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 AND 4

24. Not pressed

ISSUE NO.3

25. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

26. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

27. While testifying in the Court as PW1, the petitioner has given his age as 35 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the job. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

28. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.5)

29. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. 01.10.1998 except back wages. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 247/2012

Date of Institution : 17.5.2012

Date of Decision : 25.02.2013

Shri Budhi Ram s/o Shri Udham Chand, r/o Village and P.O. Hillor, Tehsil Pangi, District Chamba, H.P. . *Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Pangi at Killar, Distt. Chamba, (H.P.) . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Budhi Ram S/O Shri Udham Chand, R/O Village and P.O. Hillor, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, H.P.P.W.D. Division, Pangi at Killar, District Chamba, H.P. w.e.f. October, 2005 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority and amount of compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the year 1988. He served as such up-to the year, 2005 and completed more than 160 days of work (Pangi is tribal area) in each and every calendar year of his engagement. In the year 2005, his services were terminated by the respondent without issuing any notice. At the time of the termination of his services, the persons junior to him namely Sh. Ram Singh s/o Sh. Dhan Dev, Sh. Ram Charan s/o Shri Puran Chand and Sh. Raj Kumar s/o Sh. Bodh Ram were retained in service by the respondent. The latter failed to

abide by the principle of 'last come first go'. He (petitioner) requested the respondent to convey thereasons for the retrenchment of his services, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:- "reinstatement as daily wages Beldar w.e.f. 2005 and also his regularization from the date alongwith other persons, named above, who have been regularized as such or working as daily wages Beldars in the Department of the respondent and further prays for monthly back wages from the date he was disallowed to work as daily wages worker, in the interest of justice".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. On merits, it has been denied that the services of the petitioner were engaged as a daily wager in the year 1988 and he worked up-to the year 2005. The petitioner was employed as a daily wager in the year 1998. His mandays chart is annexure R1. The petitioner used to work intermittently as per his convenience. He did not complete 160 days of work in any calendar year of his employment. The services of the petitioner were not terminated as alleged. He left the job of his own as he is/was gainfully self employed. S/Sh. Ram Singh, Ram Charan and Raj Kumar worked in continuity under him (respondent). Moreover, they are senior to the petitioner. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner never approached him (respondent) for reengagement or any other purpose. Since the petitioner did not complete 160 days of work he cannot be considered for regularization as per the policy of the Government. The instant industrial dispute has been raised by the petitioner at a belated stage. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the mandays chart has been prepared by the respondent as per his convenience just to benefit the persons junior to him (petitioner).

5. Per order dated 17.11.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. October, 2005 is illegal and unjustified as alleged? . . .OPP
2. Whether the claim petition is not maintainable in the present form? . . .OPR
3. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .OPR

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS**ISSUES NO.1 and 2**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Budhi Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he worked with the respondent intermittently from the year 1996 to August, 2004. He also denied that in the month of August, 2004, he left the job willingly. He admitted that Shri Ram Singh etc. served the respondent/department continuously and are senior to him. He also admitted that no person junior to him has been engaged by the respondent after his alleged termination.

10. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division Killar (Pangi), respondent testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that as per the record no notice was given to the petitioner calling upon him to resume his duties after he allegedly abandoned the job. He denied that artificial/fictional breaks were provided to the petitioner and he has given a phoney statement.

11. Ex. RW1/A is the mandays chart relating to the petitioner.

12. Ex. RW1/B is the month/year-wise mandays details of S/Sh. Balak Chand and others working in the office of the respondent.

13. No reference has been received from the appropriate Govt. regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

14. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondent in the year 1988 and he worked continuously as such up-to the year 2005. The said fact has been denied by the respondent.

15. Mandays chart Ex. RW1/A goes to show that the petitioner was initially appointed as a daily wager by the respondent in the month of June, 1996 and he worked intermittently up-to the month of August, 2004. There is no cogent and convincing evidence on the file to establish that the mandays chart Ex. RW1/A is incorrect. The bald statement made by the petitioner (PW1) to the effect that working days have been wrongly shown by the respondent cannot be taken as a gospel truth.

16. As already mentioned the mandays chart Ex. RW1/A clarifies that the petitioner served the respondent/department intermittently from the month of June, 1996 to August, 2004. Since the petitioner did not serve the respondent/department after August, 2004 the question of the termination of his services in the month of October, 2005 (as per the reference) does not arise. As no termination/retrenchment order was passed by the respondent in the month of October, 2005, by no stretch of imagination, it can be said that the termination in question is wrong and illegal.

17. Such being the situation, I have no hesitation to conclude that the instant claim petition is not maintainable in the present form. The petitioner/claimant is not entitled to any relief.

18. These issues are decided against the petitioner and in favour of his adversary.

ISSUE NO.3

19. Not pressed

RELIEF (ISSUE NO.4)

20. As a sequel to my findings on the issues No.1 and 2 above, the present claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 201/2012
Date of Institution : 07.4.2012
Date of Decision : 25.02.2013

Shri Kehar Singh s/o Shri Nain Chand, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. . .*Petitioner.*

Versus

The Executive Engineer, HPPWD Division Pangi at Killar, Distt. Chamba, (H.P.) . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T. R. Bhardwaj, AR
: Sh. Inder Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kehar Singh S/O Sh. Nain Chand, R/O Village Ghissal, P.O. Sach, Tehsil Pangi, Distt. Chamba by The Executive Engineer, HPPWD Division Pangi at Killar, Distt. Chamba (H.P.) during the year 2004 without issuing charge-sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily waged beldar by the respondent on muster roll basis in the month of April, 1994. He worked continuously as such up-to the month of September/October, 2004. During the period of his employment, fictional breaks were provided to him by the respondent so as to favour the persons junior to him (petitioner). He never absented from his duties. The breaks were given to him by the respondent so that he does not complete 160 days of work (Pangi is tribal area) in each and every calendar year of his engagement. Since he never absented from his duties, the period of intermittent breaks is required to be counted for the purpose of continuous service. In the month of September/October, 2004, his services were terminated by the respondent by a verbal order without assigning any reason. Before the termination of his services, neither any notice was given nor the retrenchment compensation was paid. Even one month pay in lieu of the notice period was not given to him. At the time of the retrenchment of his services, the persons junior to him namely S/Sh. Balak Chand and Amar Nath etc. were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. Before the termination of his services, the overall seniority list of daily wagers working under the respondent was not circulated. The services of the persons junior to him (petitioner) have already been regularized by the respondent. If the fictional breaks would not have been given and his services would not have been illegally terminated, he (petitioner) must have completed eight years of continuous service as on 31.12.2001. His services would also have been regularized as per the policies of the Government and the trite laid down by the Hon’ble Apex Court in Mool Raj Upadhyay’s case. After his disengagement, new/fresh hands have been engaged by the respondent. He was not given an opportunity of re-employment. He is having spot less service record. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “a) The oral order of termination of my services passed by the respondent (in the month of September/October 2004) be set-aside being illegal, arbitrary and unjustified.
- b) To direct the respondent to re-instate the services of petitioner w.e.f. the date of my illegal termination alongwith full back wages, seniority including continuity of services as the petitioner remained un-employed since the date of illegal retrenchment/termination of services.
- c) To direct the respondent to count the period of intermittent breaks given in service to the applicant/petitioner prior to November, 2005 from time to time be counted towards the calculation of continuous service of 160 days in each calendar year under Section 25-B of ID Act and regularize the services of the petitioner w.e.f. 01.01.2002 or 01.01.2004 alongwith all consequential benefits.

- d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- e) To direct the respondent to re-engage petitioner on muster roll basis pending final decision of the case.
- f) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The petitioner worked for 100 days in the year 1994, 104 days in the year 1995, 166 days in the year 1996, nil days in the year 1997, 81 days in the year 1998, 112 days in the year 1999, 76 days in the year 2000, 76 days in the year 2001, 90 days in the year 2002, 119 days in the year 2003 and 100 days in the year 2004. His mandays chart is annexure R-1. In the year 2004, the petitioner left the job of his own accord and free will. As per the instructions issued by the Government of Himachal Pradesh, 160 days of continuous service in each calendar year for eight years in tribal area of Killar (Pangi) is required for seniority/regularization. The petitioner did not fulfill the said criteria. For the said reason, his name cannot be considered for seniority/regularization. Since the petitioner voluntarily left the service, he is not entitled to any protection under the Act. On merits, it has been owned that the services of the petitioner were initially engaged as a daily waged beldar on muster roll basis in the month of April, 1994. No fictional breaks were provided to the petitioner during the period of his employment as claimed. The petitioner did not report for work during the working season and abandoned the job. The persons whose names have been disclosed by the petitioner worked in continuity with him (respondent) and became eligible for regularization as per the policy of the Government. Since the petitioner abandoned the job no notice was required to be served upon him as per Section 25-F of the Act. The principle of 'last come first go' was duly followed. The petitioner was not interested to re-join his duties despite the availability of the work. Now the State Government has imposed a complete ban on the engagement of the daily paid workers. In Pangi valley generally the working season is between April to November. During the remaining period, the valley remains snow clad. The petitioner is gainfully employed as an agriculturist. No provision of the Act has been flouted. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he abandoned the job.

5. Per order dated 17.11.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent during the year 2004 is illegal and unjustified as alleged? . . . OPP.
2. Whether the claim petition is not maintainable in the present form? . . . OPR.
3. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? . . . OPR.
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Kehar Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he used to work as per his sweet will and voluntarily left the service in the month of September, 2004. He admitted that he earns his livelihood by doing the work of agriculture.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division Killar (Pangi) respondent testified as RW1. He corroborated on oath the contents of the reply preferred by him. In the cross-examination, he admitted that as per the record no notice was given to the petitioner calling upon him to resume his duties after he allegedly left the service. Even no departmental proceedings were initiated against the petitioner. He also admitted that at the time of the engagement of the new/fresh workmen namely Shri Gian Chand and Shri Mehar Chand in the year 2007, an opportunity of re-employment was not afforded to the petitioner.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the mandays chart pertaining to Shri Balak Chand and nine other beldars working under the respondent.

12. No reference has been received from the appropriate Govt. regarding providing the artificial/fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the month of April, 1994 and he worked as such up-to the month of September, 2004. The said fact finds support from the mandays chart Ex. RW1/A. The version of the petitioner is that in the month of September, 2004, his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

14. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner asking him to resume his duties after he allegedly abandoned the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

15. The mandays chart Ex. RW1/A goes to show that the petitioner did not complete 160 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. September, 2004 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus, not attracted in this case.

16. From the mandays chart Ex. RW1/B, it can be gathered that Shri Balak Chand etc. were employed by the respondent in the year 1996 and thereafter. They are junior to the petitioner (who was employed in the month of April, 1994) and are still serving the respondent/department. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. Not only this, Ex. RW1/B reveals that one Shri Gautam Singh s/o Shri Gian Chand was engaged by the respondent in the year 2007 after the disengagement of the services of the petitioner. There is nothing on the record to show that at the time of engaging new/fresh hands an opportunity of re employment was afforded to the petitioner by the respondent. That being so, it can be safely said that the respondent has contravened the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

17. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

18. Not pressed

ISSUE NO.3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

21. While testifying in the Court as PW1, the petitioner has given his age as 34 years. He also admitted that he earns his livelihood by doing the work of agriculture. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith.

He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. September, 2004 except back wages. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 227/2010

Date of Institution : 06.8.2010

Date of Decision : 25.02.2013

Smt. Pushpa Sharma w/o Shri Ram Nath Sharma, r/o Village Gadeheda, P.O. Sajayao Piplu, Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Block Development Officer, Dharampur, Tehsil Sarkaghat, District Mandi, H.P.
2. Pardhan, Gram Panchyat, Sajayao Piplu, Tehsil Sarkaghat, District Mandi, H.P. . *Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent No.1 : Sh. Sanjeev Katoch, Dy. D.A.

For the Respondent No.2 : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Smt. Pushpa Sharma W/O Shri Ram Nath Sharma by (1) The Block Development Officer, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. (2) Pardhan, Gram Panchyat, Sajayao Piplu, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. July, 2005 without giving her opportunities of consideration for re-engagement

from the date of appointment her junior/fresh person and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a craft teacher on contract basis by the respondents w.e.f. 1st April, 1997. She worked as such up-to January, 1999. Thereafter, her contract was renewed by the respondent No.1 per letter No.4938 dated 20.1.1999. She worked continuously under the respondents up-to 31.3.2006 despite the fact that no contract was renewed by the respondents after 20.1.1999. During the period of her employment, she worked to the entire satisfaction of her superiors. On 1st April, 2006, her services were terminated by the respondents by a verbal order. Before the termination of her services, no opportunity of being heard was given to her. No reason for the retrenchment of her services was assigned by the respondents. Neither she was charge-sheeted nor an inquiry was conducted against her. The retrenchment compensation was also not paid to her. She had completed 240 days of work in each and every calendar year of her engagement as well as in a block of 12 calendar months preceding the date of her termination i.e. 01.4.2006. Smt. Nisha Devi, Smt. Lata Thakur, Smt. Parveen Kumari, Smt. Meera Devi and Smt. Snehlata Sharma were also appointed by the respondents alongwith her (petitioner) as the craft teachers. All the above named teachers are junior to her. At the time of the termination of her services, the persons junior to her namely Smt. Nisha Devi etc. were retained in service by the respondents. The latter failed to abide by the principle of 'last come first go'. After the termination of her services one Smt. Om Lata has been appointed as a craft teacher in the year 2006 by the respondents in her (petitioner's) place. At the time of engaging the services of Smt. Om Lata, she (petitioner) was not afforded an opportunity of reemployment. She is entitled to the regularization of her services as per the policies of contract employees framed by the State Government from time to time. She completed 8 years of continuous service on contract basis on 31.3.2005. She is/was entitled to the regularization w.e.f. 01.4.2005 in the regular pay scale of the craft teachers fixed by the State Government. The pay scale of all the contract employees has been revised by the State Government from 01.12.2009 onwards. She is also entitled to all the benefits after the revision of the pay scales. From the date of her illegal termination, she is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “i) The Hon'ble Court may kindly be set aside the unlawful termination order dated 01.04.2006 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- ii) The Hon'ble Court may kindly be directed to respondents to consider her regularization case as per the policy of state government w.e.f. 01.04.2005 and further directed to pay her revised pay scale w.e.f. 01.12.2009 to till the date of her reinstatement with all consequential service benefits throughout”.

3. On notice, the respondents appeared. They submitted separate replies controverting the averments made in the petition/statement of claim. Paras 1 to 8 of the reply of the respondent No.1 are reproduced below verbatim for ready reference:—

“1. That para No.1 of the claim petition is admitted to the extent of applicant appointment as tailoring teacher in Gram Panchayat Sajaopilu and rest of para is wrong and incorrect hence denied as a whole. It is further submitted that applicant was appointed as tailoring teacher on contract basis vide Govt. letter No. DBD(TT)97-7813 for a period of one year i.e. 24/04/1997 to 01/04/1998 on the basis of Govt. Notification vide its letter No.PCH-HC(10)3/96-14006-14152 dated 08/10/1996. The copy of Govt. Notification and appointment is also attached herewith. Moreover, applicant was paid honorarium @ 500/- per Month on the said period as under:

CB Page	Date	Period	Amount	Cheque No.
65	04/11/1997	04/97 to 7/97	1983/-	682559
79	05/05/1998	08/97 to 10/1997	1500/-	1440693
86	27/07/1998	11/1997 to 03/1998	2500/-	1440897

It is further submitted that the applicant was again appointed as tailoring teacher on contract basis vide their Letter No.DBD-4938- 39 dated 19/01/1999 for the period w.e.f. 19/01/1999 to 20/01/2000 and the said contract was signed by the applicant on the basis of Govt. notification No.PCH HC(10) 3/96 dated 18/08/1998. the copy of the said appointment and notification is also attached herewith this reply and so far the concerned of applicant contention that no contract of the applicant has been renewed by the respondent after 20/01/1999 is wrong and incorrect hence denied along with submission of applicant that she had been continuously worked with the respondent upto 31/03/2006.

2. That Para No.2 of the claim petition is correct only in respect of applicant work and conduct during her tenure and rest of the para is wrong and incorrect hence denied as a whole. It is submitted that on the basis of contract executed between the applicant and Respondent vide letter No. DBD(TT) 97-7813 dated 27/03/1997 it is specifically mentioned in the letter that the said appointment is purely based on contract bases only for a period of one year contract tenure there was no need to intimate the applicant as per the norms of contract. It is submitted that the question of completion of 240 days in each calendar years as well as last twelve calendar preceding month does not arise at all as the said appointment is purely based on one year contract between the applicant and Respondents.

3. That Para No.3 of the claim petition is again wrong and incorrect hence denied as a whole. It is further submitted that in the month of march 2006 the Gram Panchayat Sajaopiplu invited the fresh application from the eligible candidates for the post of tailoring teacher vide H.P. Govt. Notification No. PCH-HC(10) 6/96-27-10- 2003 but the applicant has not applied for the said post and Smt. Om lata w/o Sh. Virender Singh Vill-Sayathi PO Sajaopiplu Teh- Sarkaghat (H.P.) appointed as a tailoring teacher on the aforesaid post of tailoring, therefore the question of applicant appointment as tailoring teacher on the same post does not arise at all.

4. That para no.4 of the claim petition is again wrong and incorrect hence denied as a whole. It is submitted that appointment on the aforesaid post as a tailoring teacher is purely based on contract bases for a term of one year, so the question of seniority does not arise at all.

5. That para No.5 of the claim petition is admitted to the extent of Smt. Om Lata appointment in foresaid centre as tailoring teacher in the year of 2006 and rest of para is wrong and incorrect hence denied as whole. It is submitted that the claim of the applicant for the re appointment for the next year i.e. 2007-08 could not arise at all as Smt. Om Lata was already rendering her services on the said post in Gram Panchayat Sajaopiplu vide Letter No.PCHHC (10/08/1996-TT-33881-957 dated 17/11/2006 of the secretary Panchayati Raj Govt. of Himachal Pradesh. The Copy of above said letter is attached herewith. So the question of applicant contention

for re-employment under section 25-H of the industrial dispute Act, 1947 does not arise at all as the said service of the applicant is purely based on contract. It is pertinent to mention here that it has been specifically stated in every Govt. notification of appointment that after the completion of one year tenure the contract come to an end prior intimation in this respect does not compulsory. 6. That para No-6 of the claim petition is again wrong and incorrect hence denied as a whole. It is further submitted that regularization is not the condition and policy of contract.

7. That para No.7 of the claim petition is also wrong and incorrect hence denied as a whole.

8. That Para No.8 of the claim petition need's no reply".

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed with costs.

4. Almost on similar lines is the reply preferred by the respondent No.2. He has also pleaded that the petitioner was appointed as a tailoring teacher on contract basis by the B.D.O., Dharampur (respondent No.1) on payment of Rs.500/- each month as honorarium. She worked up to 31.3.2006. The appointment of the petitioner was temporary and on contractual basis from year to year. She was not appointed as a daily wage. The petitioner did not apply for the post of tailoring teacher in the year 2006. Her contract was up-to the last working day of the year. In accordance with the contract/agreement, the services of the petitioner were disengaged on the last working day of the year. The services of the petitioner stood automatically terminated on the completion of the contract period. Smt. Om Lata is working as a tailoring teacher after her selection in the year 2006. The petitioner did not apply for the said post because of which Smt. Om Lata was appointed on merits in her place. The petitioner is not entitled to the regularization etc. No provision of the Act has been flouted. As such, the respondent No.2 has also sought the rejection with costs of the claim petition.

5. In the rejoinders, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

6. Vide order dated 10.8.2011, following issues were struck by my Id. Predecessor:—

1. Whether the disengagement of the petitioner w.e.f. 01.4.2006 is violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.

2. Whether the reference is not maintainable as the petitioner was appointed against contract basis as alleged. If so, to what effect? . . .OPR.

3. Relief.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file.

8. In support of his arguments, the Id. counsel/AR for the claimant/petitioner has cited the below mentioned rulings:—

i) U.P. Financial Corporation and Another vs. Neelam Sharma and Others, 2001 LLR 109 (Allahabad H.C.)

ii) Uttar Pradesh State Sugar Corporation Ltd. vs. Om Prakash Upadhyay, 2001 LLR 1220 (SC).

I have scanned both these authorities. With humility, I feel apposite to mention here that the same deal with the cases under the U.P. Industrial Disputes Act, 1947. The said Act is not applicable to this State viz. the State of Himachal Pradesh.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

10. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

11. Smt. Pushpa Sharma, (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, she admitted that her services were engaged in a scheme meant for the panchayats on payment of Rs.500/- per month as honorarium. She also admitted that the appointment letter was issued in her name and as per the terms and conditions of the said letter her services were to be engaged for one year. In the appointment letter, it was mentioned that in case the terms of the appointment are acceptable to her, she should execute an agreement on the judicial paper where after the agreement took place between her and the Pradhan (respondent No.2). She admitted that in the year 2006, she did not apply for the post of the craft/tailoring teacher. Smt. Om Lata was appointed in the year 2006, who is now running the centre. She feigned ignorance about the fact that after the appointment of Smt. Om Lata no work is available for her (PW1). She (PW1) admitted that her services were engaged for four hours daily on part time basis. Mark-A (subsequently exhibited as Ex. RW1/B) i.e. the copy of the appointment letter or temporary/contract basis and the agreement/contract dated 20.1.1999 (Mark-B) bear her signatures in the red circle.

12. Conversely, Shri Ravinder Prakash, Block Development Officer, Dharampur (respondent No.1) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that no letter was issued in the name of the petitioner asking her to appear in the interview in the year 2006. A notice regarding the appointments to be made was pasted on the notice board of the Panchayat.

13. RW2 is Shri Rakesh Kumar, Pradhan, Gram Panchayat, Sajao Piplu (respondent No.2). He lent credence to the version of the respondent No.1.

14. In the cross-examination, he denied that he has given a phoney statement and the services of the petitioner were disengaged in a wrongful manner.

15. Ex. RW1/A is the copy of the Anubandh Patra (contract/agreement) which was executed between the petitioner and the respondents. It clarifies that her services were engaged from 02.4.1997 to 01.4.1998 on contract basis on payment of Rs.500/- each month as honorarium for four hours per day.

16. Ex. RW1/C is the copy of the letter dated 08.10.1996 written by the Director, Panchayati Raj, Govt. of Himachal Pradesh to all the Block Development Officers in the State regarding the setting up of the industrial/vocational training centres in the Panchayats.

17. Ex. RW1/D is the copy of the letter dated 17.11.2006 written by the Secretary (Panchayati Raj), Government of Himachal Pradesh. Vide this letter, the contract period of the tailoring teachers appointed on contract basis was ordered to be renewed for one year more.

18. Ex. RW1/E is the copy of the notification dated 18th August, 1998 issued by the Government of Himachal Pradesh. As per this notification, new scheme of vocational/training centres for every Gram Panchayat in the State was introduced in supersession of the previous scheme notified per letter dated 8th October, 1996 (Ex. RW1/C).

19. Ex. D1 is the copy of the notification dated 27th October, 2003 issued by the Government. A new scheme of vocational/tailoring centres for the Gram Panchayats in Himachal Pradesh was introduced vide this notification in place of the old one.

20. Ex. RW2/A is the copy of a letter dated 28.3.2006 written by the respondent No.1 to the respondent No.2. It depicts that as per notification dated 27.10.2003 (Ex. D1) Smt. Om Lata was selected on merit basis to be appointed as a tailoring teacher in Sajao Piplu Panchayat.

21. Ex. RW2/B is the copy of letter dated 24.2.2007. Per this letter the contractual appointment of the tailoring teachers was ordered to be extended for one year.

22. Exts. RW2/C to J are the copies of various contracts/agreements executed by Smt. Om Lata in favour of the respondents with respect to her contractual appointment on year to year basis.

23. Exts. RW2/K and L are the copies of the agreements for employment on contractual basis executed by the petitioner in favour of the respondents from 01.3.2004 to 31.3.2004 and 01.4.2004 to 31.3.2005.

24. Ex. RW2/M is the detail of the honorarium paid by the respondents to the petitioner for the period she served as a tailoring teacher.

25. From the contents of the petition/statement of claim coupled with the evidence on the record, it can be easily gathered that the services of the petitioner were engaged on temporary/contractual basis from time to time for four hours daily on payment of the honorarium by the respondents. The petitioner has not denied the execution of various agreements/contracts in favour of her adversaries. The perusal of the agreements goes to show that the services of the petitioner were to come to an end automatically on the completion of the contract period. In view of these facts, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were wrongly and illegally terminated by the respondents.

26. In S.M. Nilajkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608, the Hon'ble Supreme Court has held as under:

“.....The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:—

- i) that the workman was employed in a project or scheme or temporary duration;
- ii) the employment was on a contract, and not as a dailywager simplicitor, which provided interalia that the employment shall come to an end on the expiry of the scheme or project; and

- iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.....”

27. The petitioner (PW1) admitted that the appointment letter Mark-A (later on exhibited as RW1/B) was issued in her name by the respondent No.1. In this letter, it was clearly mentioned that her services have been engaged on contract basis for one year only and if the terms of appointment are acceptable to her, she should execute an agreement before the employment. She (PW1) admitted that the agreements were executed by her after admitting the terms and conditions of the appointment to be correct.

28. Otherwise also, the perusal of the file unfolds that per notification dated 27th October, 2003 the copy of which is Ex. D1, fresh guidelines in supersession of the previous scheme were issued by the Government for vocational/tailoring centres in the Gram Panchayats. As per the new scheme, the petitioner did not apply and take part in the selection process. Smt. Om Lata was selected on merit basis and thereafter appointed on contractual basis in place of the petitioner as a tailoring teacher in Gram Panchayat, Sajao Piplu. Since the petitioner did not take part in the selection process, I fail to understand as to how and on what basis she is claiming the re employment?

29. Taking into account the facts and circumstances of this case as well as the trite laid down in the ruling cited supra, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The disengagement of the services of the petitioner does not amount to retrenchment as per the provisions of the Act. She is not entitled to any relief. It appears to me that the avarice of the petitioner to grab the Government job and money has forced her to file a totally false and baseless claim.

30. These issues are decided against the petitioner and in favour of the respondents.

RELIEF (ISSUE NO.3)

31. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 198/2012

Date of Institution : 07.4.2012

Date of Decision : 25.02.2013

Shri Sewa Ram s/o Shri Charu Chand, r/o Village Ghalwas, P.O. Karyas, Tehsil Pangi,
District Chamba, H.P. *.Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, Distt. Chamba, (H.P.)
.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sewa Ram S/O Shri Charu Chand by Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. w.e.f. Year, 2004 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

“1. That the applicant had raised his demand notice against the respondent vide his demand notice dated 31.07.2007 against his unlawful termination from his services and copy of the same was forwarded to the learned Labour cum conciliation officer, Chamba and the conciliation officer has fixed the conciliation proceeding and during the conciliation proceeding the demand of applicant has not accepted by the respondent and than the matter had referred to the appropriate govt. for making the reference. It is submitted that the appropriate govt. had made the reference vide his letter dated 26.08.2009 and the same has been referred to the Hon’ble this court for adjudication.

2. That the Hon’ble this court has not fixed the date of hearing to the above said case and then the applicant has approached to the Hon’ble this court regarding fix the date of above said case then has came to know that the copy of the reference for above said matter has not received from the office of learned Labour Commissioner, Shimla and without reference the Hon’ble court can not be entertain the above said matter. It is submitted that the applicant has approached to the appropriate govt. from time to time in his office up to 2011 and nothing has been done so far by the appropriate govt. and then the applicant had represented to the learned Labour Commissioner vide his letter dated 01.10.2011, 25.11.2011 and dated 09.01.2012 regarding send the copy of

notification of the reference as referred dated 26.08.2009 to the Hon'ble this court and the appropriate govt. has confirmed the above said matter before the Hon'ble this court by telephonically and then the appropriate govt. has send the reference notification to the Hon'ble this court vide letter dated 26.03.2012 and copy of the same has been forwarded to the applicant as well as his authorized representative Mr. N.L. Kaundal Legal Advisor, B.M.S.

3. That it is submitted that due to the fault of the appropriate govt. to not send the copy of the reference to the Hon'ble this court and for this purpose I spent amounting Rs.50000/-. It is again categorically submitted here that the persons namely Amar Singh, Amar Nath, Krishan Singh, Trilok Chand, Thumni Devi and Jagat Ram who have been raised the Industrial Dispute against the respondent in the year 2007 and all the reference have been made by the appropriate govt. in the year 2009 and the same has been referred to the Hon'ble this court and has been decided in the year 2010 and 2011 and services of above named workmen have been re-instated by the respondent as per the order of Hon'ble this court and all are presently working under the respondent with out any break and due to non send the copy of reference to the Hon'ble this court the applicant has huge loss amounting Rs above one lac by way off wages from the date of his co workmen have been reinstated and pay them regular wages as per the minimum wage fixed by the state govt. from time to time. Brief facts of the case:—

1. That the services of applicant have been engaged on daily waged basis on muster roll as beldar by the respondent w.e.f. Oct, 1991 and he had been interrupted worked under the Assistant Engineer, Sub Division No 1 Killar up to September, 2004 and on the above said period he had been completed more than 160 days from 1991 to 2004 and also he services have been engaged and disengaged intentionally by the Assistant Engineer to not letting to complete 160 days in every calendar year for the purpose of his regularization. It is submitted at the time of his engagement and disengagement the works and funds were available in the department where as junior to him retained in service continuously with out any break namely Jeet Singh S/o Sh. Lakhia Ram (1994), Janto Devi W/o Sh. Chunni Lal (2001), Jeet Sing S/o Sh. Paras Ram (1997), Gijja Ram S/o Sh. Ghseetu Ram (1999), Laxmi Devi W/o Sh. Beer Singh (1999) and Gian Chand S/o Sh. Dhana Ram (1997).

2. That the services of applicant have been unlawfully terminated by the respondent in the year 2004 and before terminating the service of applicant he has not served any show cause notice, charge-sheet, neither the enquiry had been conducted against him in his alleged misconduct and one month notice pay in lieu of notice period and retrenchment compensation under section 25F (a&b) have not paid to the applicant at the time of his unlawful termination and without complying the same every termination is null and void.

3. That it is submitted that at the time of his unlawfull termination in the year 2004 the principal last come first go has not followed by the respondent where as person junior to him namely S/Sh. & Smt. Jeet Singh S/o Sh. Lakhia Ram (1994), Janto Devi W/o Sh. Chunni Lal (2001), Jeet Singh S/o Sh. Paras Ram (1997), Gijja Ram S/o Sh. Ghseetu Ram (1999), Laxmi Devi W/o Sh. Beer Singh (1999) and Gian Chand S/o Sh. Dhana Ram (1997) have been retained in service and the same has been violated under section 25G of the I.D. Act 1947. The respondent has also not violated the section 25G but also violated section 25-H of the I.D. Act 1947, where as new persons had been appointed by the respondent after termination of his services in the year 2004 namely Sh. Ram Singh S/o Sh. Prem Lal (2006), Dev Raj S/o Sh. Desh Raj (2005), Ram Singh S/o Sh. Bir Chand (2006) and Mahinder Singh S/o Sh. Sham Lal (2009). It is submitted at the time of the appointment of the above said workers from 2005 to 2009 even that after file the demand notice dated 31.07.2007 he has not given any opportunity for re employment and it is clear violation of section 25-H of I.D. Act 1947.

4. That is submitted that the persons whose name mentioned in the para-3 have not been engaged and disengaged by the respondent as such they have not given fictional breaks from their services from their initial appointment on muster roll and the person who have been completed more than 160 days in each calendar years and as per the criteria fixed by the state govt. for continue service in the tribal area of killar/pangi sub division of the Chamba for the purpose of continue service as required under section 25B of the I.D. Act 1947 for the purpose of regularization and on the basis of continue service the services of S/Sh. Jeet Singh S/o Sh. Lakhia Ram, Bimlo Devi W/o Sh. Sham Lal, Janto Devi W/o Sh. Chunni Lal and Gian Chand S/o Sh. Dhana Ram have been regularized by the respondent after completion of eight years continue service as per the policy frame by the state govt from time to time. Hence the applicant was working in the year 1991 and he had worked interrupted service in the department on fictional breaks with the department and had not completed 160 days in some years up to 2004 and due to this the applicant is also entitled his regularization after completion of eight services in regular pay scale and the applicant is also entitled for back arrears along with all consequential benefits. It is submitted that the fictional breaks have been given to applicant by intentionally by the Assistant Engineer from time to time and person junior to him have been retained continuously and have been regularized before him so the department can not be say the applicant was deliberately absented from his duties.

5. That the verbal termination order passed by the respondent in the year 2004 is highly unjustified, arbitrary, unconstitutional, contrary, unlawful and against the mandatory provision of the Industrial Disputes Act, 1947 and the same be set aside on the above grounds and the act of the respondent also unfair labour practice under section 2 (ra) read with schedule 5th clause 10 of the I.D. Act 1947 to deprived him for permanent status.

6. That it is specifically stated here that the applicant is still unemployed and not gainfully employed anywhere from the date of his illegal termination i.e. in the year 2004 to onwards and the services of applicant be reinstated with full back wages, seniority and in continuity of services with all consequential service benefits throughout and the break period of applicant may kindly be condone in continuity of service and the case of applicant may kindly be consider for regularization on the basis of seniority.

Relief sought:

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

- i) The Hon'ble Court may kindly be set aside the illegal termination order w.e.f. in the year 2004 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service along with all consequential service benefits throughout.
- ii) The Hon'ble Court may kindly be again directed to respondent to regularize the services of applicant after completion of 10 years continuous service as per the policy of Mool Raj Upadhaya.
- iii) Any other relief the Hon'ble Court may deem fit may kindly be granted in the favour of applicant and against the respondent".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner

has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. On merits, paras 1 to 6 of the reply are reproduced below verbatim for ready reference:—

“1. In reply to Para No. 1, 2 & 3. It is submitted that these paras parts was with the record of the conciliation hence needs no reply. How over the matter/disputes of the applicant had duly been notified by the labour commissioner by referring the same for the adjudication of the Hon’ble Court in due case of time.

Reply to the paras of brief facts of the case.

Para No.1. That the content of this para are wrong and hence denied. The service of the applicant have been engaged on daily waged basis on muster roll as beldar by the respondent department w.e.f. 10/1991= 61 days, 1992=192 days, 1993=84 days, 1994=21 days, 1995=139 days 1996 = Nil, 1997 Nil 1998=204 days, 1999=153 days, 2000=152 days, 2001=175 days, 2002=150 days, 2003= 133 days, 2004=108 days. Thus he did not worked continuously 10/8 year with 160 days regular service and during winter season there is no construction activities in Pangi valley therefore, Laborers are retrenched for some months i.e. November to April. As and when the working season set in the valley all the laborers join their duties but the petitioner even failed to present full month in the month of May to October on the other hand persons shown junior had worked as per decision of Hon’ble Labour Court. As per Annexure-R-II and III.

Para No.2: That the content of this para are also wrong and hence denied. The services of applicant have not been terminated by the respondent but he had left the job at his own will. It is further submitted w.e.f. and never reported for duty these after during the period of engaged the petitioner had remind a intermittent worker which as evident.

Para No.3: That the contents of this para are also wrong hence denied. The replying respondent had at not stage violated the principle of last come first go. The man day of the workman mentioned in this para are being placed as Annexure R-1. It is submitted that the persons worked continuously and become eligible for regularization where as the petitioner was not interested towards his duties. It is further intimated that Sh. Ram Singh S/o Sh. Prem Lal, Sh. Dev Raj S/o Sh. Des Raj and Ram Singh S/o Sh. Beer Chand and Mohinder Singh S/o Sh. Sham Lal have been appointed on compensation ground and other on court order.

Para No. 4: That the contents of this para are wrong and hence denied. It is submitted that the persons whose name mentioned in para-3 have been engaged on compensation ground. The issue of as not been referred by the affrofrate Govt. for the adjudication of the hon’ble court. However at no stage of his engagement the fix from brakes were ever given to the applicant by the respondent office/department. The applicant being interment worker could not fulfill the criteria for regularization/continuous service. Whose as other persons had worked continuously.

Para No.5: That the contents of this para are wrong and hence denied. It is submitted that his services were not terminated orally by the respondent but he left the job at his own will w.e.f. There is no question of unfair labour pradis on the part of the respondent under the section 2(a) of ID act 1947.

Para No.6: That the contents of para 6 of the claim petition are wrong and hence denied. The applicant is gainfully employed for this livelihood and is also carrying on the profession of the agriculture”.

In these circumstances, the respondent prays that the petition in hand being meritless be rejected.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 14.12.2012, following issues were struck.
 1. Whether the termination of services of the petitioner by the respondent w.e.f. the Year 2004 is illegal and unjustified as alleged? . .OPP.
 2. Whether the petition is not maintainable in the present form? . .OPR.
 3. Whether the claim petition is hit by the vice of delay and laches as alleged. If so, its effect? . .OPR.
 4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner, Shri Sewa Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that he left the job of his own. He also denied that the workmen whose names have been disclosed by him, worked in continuity with the respondent/department. Further, he denied that he used to remain absent from his duties and has given a phoney statement.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division Killar/Pangi (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that as per the record, no notice was given to the petitioner asking him to resume his duties after he allegedly left the job. He denied that artificial breaks were provided to the petitioner and he (RW1) is not speaking the truth.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the mandays chart pertaining to Shri Gian Chand and six other beldars.

12. Ex. RW1/C is the mandays chart in respect of Smt. Thumuni Devi w/o Shri Sukru Ram.

13. No reference has been received from the appropriate Govt. regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of October, 1991 and he worked as such up-to the month of September, 2004. The version of the petitioner is that in the month of September, 2004, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

16. The mandays chart Ex. RW1/A clarifies that the petitioner did not complete 160 days of work (Pangi is tribal area) in a block of 12 calendar months preceding the date/month of his termination i.e. September, 2004 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

17. From the mandays charts Exts. RW1/B and C, it can be gathered that Shri Gian Chand etc. were appointed in the years 1997 and 1998 whereas the services of Smt. Thumuni Devi were engaged in the year 1992. Shri Gian Chand and others are junior to the petitioner. They are still serving the respondent/department. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. The termination of the services of the petitioner by the respondent is thus illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240/160 days of work in a block of 12 calendar months preceding the date/month of his retrenchment.

18. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

19. Not pressed

ISSUE NO.3

20. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

22. The petitioner (PW1) in his cross-examination admitted that he earns his livelihood by doing the work of agriculture. He (petitioner) has given his age as 46 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

23. This issue is also decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.4)

24. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. September, 2004 except back wages. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 262/2010
Date of Institution : 18.11.2010
Date of Decision : 25.02.2013

Shri Subhash s/o Shri Relu Ram, r/o Village & P.O. Majharnu, Tehsil Joginder Nagar, District Mandi, H.P. (now dead) through his legal representatives:—

- 1) Smt. Babli Devi (Widow)
- 2) Smt. Jaiwanti (Mother)
- 3) Kumari Anchal (Daughter, Minor)
- 4) Master Divyansh (Son, Minor)

...Petitioner(s)

Versus

The Settlement Officer, Kangra Division, Kangra at Dharamshala, District Kangra, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Subhash S/O Shri Relu Ram by the Settlement Officer, Kangra Division at Dharamshala, District Kangra, H.P. w.e.f. 01-08-2003 after serving notice dated 21.-07-2003 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged Chainman by the respondent/department w.e.f. 2nd September, 1996 on 89 day basis. He continuously worked as such up-to 31st July, 2003. He completed 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date of his termination. He was working in Settlement Circle Manali, District Kullu. During the period of his employment, his work and conduct was above board. No complaint was received against him from any quarter. Suddenly, a notice dated 21.7.2003 was served by the respondent upon him. As per the said notice, his services were terminated w.e.f. 31st July, 2003. His services have been dispensed with without assigning any reason and paying the retrenchment compensation. Even the mandatory notice of one month was not given to him by the respondent/employer. At the time of the retrenchment of his services the persons junior to him were retained in service by the respondent. The latter adopted the pick and choose method by ignoring the principle of ‘last come first go’. The work for which his services were engaged is of a permanent nature. His (petitioner’s) services are still required by the respondent/department. After his termination, new/fresh hands have been engaged by the respondent. His seniority was ignored and he was not given an opportunity of re-employment. He preferred Original Application No. 2106/2003 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal, Shimla for the redressal of his grievances. The Hon’ble Administrative Tribunal permitted him to withdraw the Original Application as it had no jurisdiction to deal with the same. A similarly situated daily rated Chainman namely Shri Durga Das had also instituted Original Application No.2152/2003 before the Hon’ble Administrative Tribunal. The said Original Application was transferred to the Hon’ble High Court of Himachal Pradesh, Shimla and was registered as CWP (T) No.9552/2008. The impugned order/termination notice dated 21.7.2003 has already been quashed by the Hon’ble High Court of Himachal Pradesh vide judgment dated 29.4.2010. His (petitioner’s) case is fairly and squarely covered by the judgment dated 29.4.2010 rendered by the Hon’ble High Court of Himachal Pradesh. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner/applicant has claimed the following relief(s) in this case.

“I. That the Respondent may kindly be directed to re-engage/reinstate the applicant in service from the date of his illegal termination i.e. 31.7.2003 and the notice dated 21.7.2003 (Annexure R-2) may kindly be quashed and set aside.

- II. That the respondents may kindly be directed to assign seniority and regularize the services of the applicant and also pay back wages for forced unemployment being faced by the applicant on the basis of illegal termination w.e.f. 31st July, 2003.
- III. That the entire record of the case viz Muster Roll/casual card etc. be summoned and the respondent be burdened with cost of this application.
- IV. Any other order/direction which the authority deem just and proper in the interest of justice and fair play may kindly be passed/issued in favour of applicant”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable. The petitioner has no enforceable cause of action. The petition is bad on account of delay and laches on the part of the petitioner. He (respondent) by undertaking the settlement operation was performing the sovereign function of the State. Therefore, he does not fall under the definition of the ‘industry’. This Court/Tribunal has no jurisdiction to entertain and try the petition. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. On merits, it stands admitted that the petitioner was employed as a Chain Man in the office of Settlement Officer, Kangra at Dharamshala, on 02.9.1996. His mandays chart is annexure R-I. The copy of the office order with respect to the appointment of the petitioner is annexure R-II. The State Government by taking recourse to the provisions of the H.P. Land Revenue Act, 1954 carries out sovereign function of surveys/settlement of land holdings by undertaking the Settlement Operations under the overall supervision of the Settlement Officer (respondent). Per Notification dated 9th February, 1995 issued by the State Government, the area falling within the territorial jurisdiction of District Kullu came under the Settlement Operation. Copy of such Notification is appended as annexure R-III to the reply. For carrying out the Settlement Operation, he (respondent) employed Chain Men as per law in a phased manner. On 03.04.2003, as many as 64 daily paid Chain Men were engaged. Their composite seniority list is annexure R-V. With the conclusion of the work of settlement, the need of work force diminished. Due to the non-availability of the work, funds and sanction, it was difficult for him (respondent) and the State to continue with the services of all the Chain Men. Accordingly, the State of H.P. per letter dated 26.8.2002 accorded the sanction/approval for the posts of 116 casual Patwaris and 50 daily waged Chain Men. In view of the sanction, he (respondent) by applying the principle of ‘last come first go’ terminated the services of the Chain Men figuring at serial No. 51 to 64 of the seniority list (annexure R-V). A notice dated 21.7.2003 (annexure R-VI) was duly given to the petitioner informing him that his services shall stand dispensed with w.e.f. 31.7.2003. The petitioner and the similarly situated persons are not entitled to any protection under the Act or continuity in service. The Settlement Operation is not of permanent nature. It has been owned that the petitioner had instituted an Original Application before the Hon’ble Tribunal. That Original Application was withdrawn by the petitioner. The instant industrial dispute has been raised by the petitioner at a belated stage. His services have been retrenched being surplus. No provision of the Act has been flouted. The disengagement of the services of the petitioner is legal and valid. He is not entitled to any relief. No person junior to the petitioner has been retained in service or engaged/re-engaged. He (respondent) has not indulged in any unfair labour practice. It stands admitted that the Civil Writ Petition preferred by S/Sh. Durga Dass and Mohinder Singh were allowed by the Hon’ble High Court of Himachal Pradesh. The reliefs sought by them were granted by the Hon’ble High Court. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and denied the objections put forth by the respondent. It has been maintained that the settlement work is still continuing in the State of Himachal Pradesh. He (petitioner) can be re

engaged at a place where the work and funds are available. The persons junior to him namely S/Sh. Durga Dass and Mohinder Singh have already been re-employed by the respondent as per the orders of the Court.

5. Vide order dated 20.12.2011, below given issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 01.8.2003 is violative of the provisions of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the reference is not maintainable as the respondent is allegedly performing sovereign function, if so, to what effect? . . .OPR.
3. Relief.

6. At this stage, I will like to highlight that the claimant/petitioner Shri Subhash Chand died during the pendency of the petition after his examination as a witness. Accordingly, his legal heirs were brought on the record.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : No

Relief : Claim petition allowed in part vide operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

9. The petitioner Sh. Subhash Chand (who has expired) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that the work of settlement is not available with the respondent. The Settlement Operation is continuing in Joginder Nagar and Sujampur. He denied that he has instituted a phoney petition to harass his adversary.

10. Conversely, Smt. Rakhil Kahlon, Additional Registrar, Cooperative Societies, Dharamshala, who is holding the additional charge of Settlement Officer, Kangra Division at Dharamshala (respondent) testified as RW1. In her affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, she corroborated on oath the contents of the reply filed by the respondent. In the cross examination, she admitted that the petitioner served for 240 days in each and every calendar year of his engagement from the date of his appointment till termination. She also admitted that only 10 days termination notice was given to the petitioner. Shri Param Dev etc., who are junior to the petitioner, have been re-engaged by them. She also admitted that the services of Shri Mohinder Singh have been regularized. Shri Mohinder Singh is/was junior to the petitioner. She admitted that at the time of engaging the juniors, a notice of reemployment was not served upon the petitioner. She also admitted that the Settlement Operation is continuing in Districts Hamirpur, Kullu and Una. She denied that the petitioner was removed from service in a wrongful manner.

11. Ex. PW1/B (corresponding to Ex. RW1/C) is the copy of an office order dated 27.8.1996 issued by the respondent. It depicts that the services of the petitioner were engaged as a daily waged Chain Man for 89 days by the respondent and he (petitioner) was deputed in the office of Naib Tehsildar (Settlement), Manali.

12. Ex. PW1/C is the copy of the termination notice dated 21.7.2003 served upon the petitioner by the respondent. It clarifies that the services of the petitioner were retrenched w.e.f. 31.7.2003 (afternoon). Ex. PW1/C is similar to Ex. RW1/G.

13. Ex. PW1/D is the copy of the judgment dated April 29, 2010 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP (T) No.9552/2008 (OA No. 2152/2003), titled as Durga Dass vs. State of H.P. & another.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/D is the copy of the notification dated 9th February, 1995 issued by the Secretary (Revenue) to the Government of Himachal Pradesh, Shimla. It unfolds that the record of rights pertaining to District Kullu was ordered to be specially revised.

16. Ex. RW1/E is the copy of the Punjab Land Records Manual dealing with the employment of the patwaris and other temporary staff/establishment for Settlement Operation.

17. Ex. RW1/F is the seniority list of daily waged Chain Men as it stood on 31.3.2003 relating to the office of the respondent.

18. Ex. RW1/H is the copy of an office order dated 28.6.2010 issued by the respondent. It reveals that in obedience to the judgments dated 26 and 29.4.2010 rendered by the Hon'ble High Court of Himachal Pradesh the services of S/Shri Mohinder Singh and Durga Dass, daily waged Chain Men, were reengaged by the respondent.

19. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged Chain Man w.e.f. 2nd September, 1996 and he worked continuously as such up-to 31.7.2003. It is also an admitted fact that the services of the petitioner were terminated by the respondent w.e.f. 31.7.2003 (afternoon) per notice dated 21.7.2003, the copies of which are Exts. PW1/C and RW1/G. The assertion of the respondent that the services of the petitioner were disengaged because of the non-availability of the work does not appear to be true as from the statement made by the respondent (RW1), it can be gathered that the Settlement Operation is still continuing in Districts Hamirpur, Kullu and Una of the State of Himachal Pradesh.

20. The admissions made by the respondent (RW1) coupled with the documents placed on the file go to show that the petitioner had worked for 240 days in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date of his termination.

21. Section 25-F of the Act postulates as under:—

“25-F. **Conditions precedent to retrenchment of workmen.**— No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

22. Admittedly, the provisions of the above quoted Section were not complied with by the respondent. Neither one month notice was given to the petitioner/claimant nor the retrenchment compensation was paid to him.

23. Moreover, Smt. Rakhil Kahlon, (RW1) admitted that the persons junior to the petitioner are still serving under her. At the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was not afforded to him.

24. Taking into account the facts and circumstances of this case, it can be safely said that the respondent has flouted the provisions of Sections 25-F, 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is, thus, illegal and unjustified.

25. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness he was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is decided in favour of the petitioner(s) and against the respondent.

ISSUE NO.2

27. Taking into consideration the observations made by our Hon'ble High Court in Civil Writ Petition (T) No.9554/2008 titled as Mohinder Singh vs. State of H.P. & anr. decided on 26.4.2010 as well as Civil Writ Petition (T) No.9552/2008 titled as Durga Dass vs. State of H.P. and another decided on 29.4.2010, it can be easily said that the provisions of the Act are applicable to the instant case. The petition is maintainable in the present form.

28. This issue is also decided in favour of the petitioner(s) and against the respondent.

RELIEF (ISSUE NO.3)

29. As a sequel to my findings on the above issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. No orders regarding the re-engagement of the petitioner are being passed since he has already expired. However, it is made clear that the petitioner (late Shri Subhash) shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 31.7.2003 except back wages. The respondent is also directed to consider the case of the deceased petitioner for the regularization of his services within a period of six months from today. If it is found that he is entitled to the regularization of his services and the financial benefits, if any, the same shall be released by the respondent in favour of the legal representatives of the deceased petitioner as per law. Parties to bear their own costs.

30. The reference is answered in the aforesaid terms.

31. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

32. File after due completion be consigned to the Record Room.

Announced in the open Court today this 25th day of February, 2013.

By order,
Sd/-
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 108/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Balam Ram s/o Shri Prem Singh, r/o Village Aal, P.O. Jhamehar, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Balam Ram S/O Shri Prem Singh, Village Aal, P.O. Jhamehar, Tehsil Joginder Nagar, District Mandi, H. P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1998 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.1.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.1.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of November, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the

petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck: 1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1998 to August, 2007 is illegal and unjustified as alleged? . . .OPP.

2. Whether the petition is not maintainable in the present form? . . .OPR.

3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Balam Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the

petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1998 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 25.11.1998.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of

the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner). 18. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 89/2010

Date of Institution : 23.04.2010

Date of Decision : 15.03.2013

Shri Dagu Ram s/o Shri Chet Ram, r/o Village Khandla, P.O. Kummi, Tehsil Sadar, Distt. Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.
. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. B.C. Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Dagu Ram S/O Sh. Chet Ram workman by The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, (H.P.) w.e.f. December, 2004 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 21.2.1994. He worked continuously as such up-to 05.3.2005 in Rajgarh Beat. After that, his services were disengaged by the respondent on the pretext that the work is not available. As and when the work will be available, he (petitioner) shall be called back. He had completed 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date of his termination. He visited the concerned officials time and again for re-engagement, but in

vain. In the second week of August, 2006, he came to know that the persons junior to him are working with the respondent/department. The latter failed to abide by the principle of 'last come first go'. He has been disengaged mala fide. Before the termination of his services, no notice was given to him. He had become eligible for regularization of his services as a beldar w.e.f. 1st January, 2004 as per the law laid down by the Hon'ble Apex Court in Mool Raj Upadhyay's case and policies framed by the State Government from time to time. His claim has been ignored. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the applicant/petitioner/claimant has claimed the following relief(s) in this case:—

“the applicant be re-engaged in the same capacity and at the same place, as at the time of his illegal and wrongful disengagement and be regularized as such with all consequential benefits alongwith cost and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. On merits, it has been owned that the services of the petitioner were engaged as a daily waged mazdoor (labourer). He worked in Baggi Block of Suket Range from the year 1994 to 2004. The services of the petitioner were never disengaged as alleged. Actually, the petitioner fell ill and was bed-ridden. He did not join his duties despite various communications sent to him. He (respondent) never refused to re-engage the services of the petitioner, who abandoned the job. The petitioner is not eligible for regularization w.e.f. 01.1.2004. He did not complete 240 days of work in each and every calendar year of his employment. After December, 2004, the petitioner absented from duty due to the prolonged illness. In accordance with the Government policy, 8 years of continuous service with minimum 240 days in each calendar year should be completed for the purpose of regularization. The petitioner did not work for 240 days in each calendar year after December, 2001. No person junior to the petitioner has been retained in service or engaged/re-engaged. The principle of 'last come first go' was strictly followed. Moreover, the date of birth of the petitioner is 05.12.1948. He has already attained the age of superannuation on 31.12.2006. No provision of the Act has been flouted. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that he absented from duties after December, 2004. The mandays chart produced by the respondent is incorrect. He had actually worked up-to 05.3.2005. It stands admitted that he was ill. The ailment took place after wrongful disengagement of his services by the respondent/department.

5. Vide order dated 20.12.2011, following issues were framed by my Id. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. December, 04 is violative of the provisions of Sections 25-F and 25-G of the I.D. Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . .OPR.
3. Whether the claim is hit by the vice of delay and laches as alleged. If so, to what effect? . . .OPR.

4. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Dagu Ram stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he feigned ignorance about the fact that he was born on 05.12.1948. He denied that the letters Marks-X and Y (subsequently exhibited as Exts. RW2/A and B) were written to him by the respondent asking him to resume his duties in case he has recovered from the ailment. He also denied that his services were not disengaged by the respondent and he has instituted a phoney petition to harass his adversary.

10. Conversely, Shri Ajit Thakur, Divisional Forest Officer, Sunder Nagar (respondent), testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he denied that the petitioner worked up-to 05.3.2005 and his services were disengaged in a wrongful manner.

11. RW2 is Shri Mohan Lal. He simply deposed that the notices Exts. RW2/A and B were given to the petitioner. In the cross-examination, he stated that the notices were not served upon the petitioner in his presence.

12. Ex. RW1/B is the mandays chart relating to the petitioner.

13. Ex. RW1/C is the copy of the birth certificate. It unfolds that the petitioner was begotten on 05.12.1948.

14. Ex. RW1/D is the copy of a letter dated 22nd February, 2010 written by the Secretary, (Personnel) to the Govt. of Himachal Pradesh regarding age limit for disengagement of a daily wagers.

15. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the year 1994. The petitioner has maintained that he worked with the respondent/department up-to 05.3.2005 and, thereafter, his services were disengaged by the latter. On this aspect of the matter, the respondent has pleaded that the petitioner worked up-to the month of December, 2004 only and, thereafter, abandoned the job.

16. The petitioner has not placed/exhibited on the file any document evidencing that he served the respondent up-to 5th March, 2005. His bald statement to that effect cannot be taken as a

gospel truth. Mandays chart Ex. RW1/B reveals that the petitioner worked with the respondent from the year 1994 to 2004 only. In the year 2004, he served the respondent/department for 182 days.

17. Section 10 (4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. Thus, this Court/Tribunal is required to decide as to whether the alleged termination of the services of the petitioner by the respondent w.e.f. the month of December, 2004 (as per the reference) is proper and justified or not?

18. In the petition/statement of claim and the rejoinder, the petitioner has nowhere challenged his termination allegedly ordered by the respondent in the month of December, 2004. Even while testifying in the Court as PW1, he has nowhere stated that his services were retrenched by the respondent in the month of December, 2004. As already mentioned, the petitioner has categorically pleaded and stated that he worked with the respondent/department up-to 05.3.2005 and his services were terminated thereafter.

19. Since the termination order allegedly passed by the respondent in the month of December, 2004, has not been challenged by the petitioner on any ground, by no stretch of imagination, it can be said that the services of the petitioner were wrongly and illegally dispensed with by his opponent in the month of December, 2004.

20. The claim petition is not maintainable. The petitioner is not entitled to any relief.

21. These issues are decided against the petitioner and in favour of the respondent.

ISSUE NO.3

22. Not pressed.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 33/2011

Date of Institution : 16.04.2011

Date of Decision : 18.03.2013

Shri Dhani Ram s/o Shri Tulsi Ram, r/o Village Badel, P.O. Dahad, Tehsil Jhandutta, District Bilaspur, H.P. (now dead), through his legal representative

1. Smt. Parkasho Devi w/o late Shri Dhani Ram . .Petitioner.

Versus

The Divisional Forest Officer, Forest Division, Bilaspur, District Bilaspur, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Shri Dhani Ram S/O Shri Tulsi Ram daily wages workman by the Divisional Forest Officer, Forest Division, Bilaspur, District Bilaspur, H.P. w.e.f. 21-08-2007 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily wager by the respondent on 01.4.1993. He continuously worked as such up-to 20.8.2007 as well as completed 240 days of work in each and every calendar year of his employment.

He (petitioner) was drawing Rs.3,000/- per month as salary. His work and conduct was satisfactory during the period of his engagement. On 21st August, 2007, his services were terminated by the respondent by a verbal order. Before the termination of his (petitioner's) services, neither any notice was given to him nor the retrenchment compensation was paid. At the time of his retrenchment, the persons junior to him were retained in service by the respondent. The latter failed to adhere to the principle of ‘last come first go’. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim preferred by the legal heir of the deceased petitioner, she has claimed the following relief(s) in this case:—

“reinstatement is not possible as such the compensation as deemed fit and proper in the circumstances of the case be passed”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of Shri Dhani Ram (deceased petitioner) were initially engaged as a daily wager in the month of March, 1993 and he worked continuously up-to 20th August, 2007. Wages as prescribed by the Government were paid to the petitioner so long as he served the department. The mandays chart of the deceased petitioner is annexure R1. The services of the petitioner were never disengaged as alleged. Even no wages are outstanding. Actually, keeping in view the continuous service of the deceased petitioner, his name and the names of other similarly situated daily waged workers were sponsored for regularization as per the policy of the Government dated 18.6.2007. The sanction for the regularization of the services of the daily waged workmen was accorded by the Conservator of Forests, Bilaspur. Accordingly, the claimant/applicant Shri Dhani Ram was directed to submit the requisite documents/certificates. He failed to comply with the directions in this regard issued by the office. He (petitioner) also ignored the reminders given by the office. Instead of complying with the conditions for regularization of the services, the petitioner stopped working voluntarily. He left the job. His (respondent's) office made efforts to procure the documents/certificates for the regularization of the services of the petitioner. It surfaced that the deceased petitioner was borne on 06.1.1948. By the time the sanction for the regularization of his services was received, he had already attained the age of superannuation i.e. 58 years prescribed for Class-IV employees as per the amended notification dated 10.5.2001 issued by the Government. The other workmen continued in service on account of their age. Moreover, they did not abandon the job. The petitioner cannot claim parity with the other workmen. He (petitioner) absented from his duties on account of the illness. He was suffering from paralysis of left side and was undergoing the treatment in different medical institutions as an indoor patient. No person junior to the petitioner has been retained in service or engaged/re-engaged. No provision of the Act has been flouted. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that from 21.8.2007 onwards, no muster roll was issued by the respondent/department in the name of the petitioner. The same amounts to unfair labour practice.

5. Per order dated 23.8.2012, following issues were struck:—

1. Whether the verbal termination of services of the petitioner (Lt. Sh. Dhani Ram) by the respondent w.e.f. 21.08.2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .OPR.
4. Relief.

6. At this stage, I will like to highlight that during the pendency of the matter before the appropriate Government, the workman Shri Dhani Ram expired on 27.8.2009. Accordingly, his legal heir was brought on the record.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.
8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : No

Issue No. 2 : Yes

Issue No. 3 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

9. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

10. Smt. Parkasho Devi, the legal representative/wife of the deceased petitioner, stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross examination, she denied that late Shri Dhani Ram used to remain ill. She admitted that in the year 2009, he was suffering from paralysis and was under going the treatment in I.G.M. C., Shimla. She does not know that in the year 2007, the respondent/department had passed an order for the regularization of the services of her deceased husband. She is not aware of the fact that as per conditions for regularization, the respondent had asked Shri Dhani Ram (deceased petitioner) to furnish his birth certificate which he failed to do. She denied that a letter dated 18.9.2008 was also written to the deceased petitioner by the respondent, whereafter, he (Shri Dhani Ram) stopped attending to his duties. She admitted that Ex. R1 (corresponding to Ex. RW1/G) is the copy of their parivar register. She feigned ignorance about the fact that in the year 2008, her husband was 60 years old. She denied that the deceased petitioner stopped working and failed to submit the birth certificate etc. as he had already attained the age of superannuation. She even denied that she is not entitled to the compensation etc.

11. Conversely, Shri Dev Raj Kaushal, Divisional Forest Officer, Bilaspur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that when the petitioner left the job no notice was given to him. He also admitted that the persons junior to the deceased petitioner are serving under him (RW1) and their services have already been regularized. He refuted that the services of the petitioner were disengaged in a wrongful manner and he has given a phoney statement.

12. Ex. PW1/B is the copy of the legal heir certificate issued by the Tehsildar, Bilaspur. It depicts that Shri Rakesh Kumar (son) and Smt. Parkasho Devi (wife) are the legal/natural heirs of the deceased petitioner.

13. Ex. PW1/C is the copy of the death certificate. It reveals that Shri Dhani Ram (original petitioner) breathed his last on 27.8.2009.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of the letter dated 18.6.2007 written by the Secretary (Personnel) to the Government of Himachal Pradesh regarding the regularization of the services of daily paid/contingent paid workers.

16. Ex. RW1/D is the copy of the letter dated 18.9.2008 written by the respondent to Shri Dhani Ram (deceased petitioner). Vide this letter, the respondent asked the workman (petitioner) to submit the birth certificate etc. for the regularization of his services as he (Dhani Ram) did not submit the requisite certificates/documents earlier.

17. Exts. RW1/E and F are the copies of the medical certificate and discharge slip pertaining to the petitioner.

18. Ex. RW1/H is the seniority list of daily wagers of Bilaspur Forest Division as it stood on 31.12.2005. The name of late Shri Dhani Ram (petitioner) figures at serial No.29 of this list.

19. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the month of March, 1993 and he worked continuously as such up-to 20.8.2007. The version of the petitioner is that on 21.8.2007, his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the name of the petitioner alongwith the similarly situated workmen was recommended for regularization as per the Government policy contained in the letter dated 18.6.2007, the copy of which is Ex. RW1/C. The petitioner was directed to submit his date of birth certificate etc. for the regularization of his services which he failed to do. Instead of furnishing the birth certificate etc., the deceased petitioner stopped working and abandoned the job since he had already completed 58 years of age i.e. the age of superannuation.

20. Smt. Parkasho Devi (PW1) in her cross-examination admitted that Ex. R1 is the copy of their parivar register. It corresponds to Ex. RW1/G. The perusal of the copies of the parivar register clarifies that Shri Dhani Ram (deceased petitioner) was begotten on 6th January, 1948. It is not the case of his legal heirs that the date of birth of Shri Dhani Ram incorporated in Ex. R1 is incorrect. This indicates that late Shri Dhani Ram had completed 58 years of age on 05.1.2006. Since the petitioner had attained the age of superannuation in the month of January, 2006, he had no right to continue in service thereafter. Therefore, the question of the disengagement of his services wrongly and illegally by the respondent w.e.f. 21.8.2007 (as per the reference) does not arise.

21. Even if, the petitioner had worked for more than 240 days in a block of 12 calendar months preceding the date of his alleged retrenchment or the persons junior to him are serving the respondent/department, the same will not come to his (petitioner's) rescue since he had retired from service on 05.1.2006 (or the last day of the month i.e. 31/1/2006. By no stretch of imagination, it can be said that the respondent indulged in some unfair labour practice or any provision of the Act has been contravened by him.

22. That being so, I have no hesitation to conclude that the petitioner is not entitled to any relief. The claim petition is not maintainable. The claim put forth by the legal representative of the deceased petitioner is fallacious.

23. These issues are decided against the petitioner and in favour of the respondent.

ISSUE NO.3

24. Not pressed.

RELIEF (ISSUE NO.4)

25. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 115/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Govind Ram s/o Shri Beli Ram, r/o Village Hiyun, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Govind Ram S/O Shri Beli Ram, Village Hiyun, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2001 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.4.2001 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.4.2001 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of April, 2001. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in

a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2001 to August, 2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS**ISSUE NO.1**

8. Shri Govind Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2001 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.4.2001.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 46 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 270/2012

Date of Institution : 06.07.2012

Date of Decision : 01.03.2013

Shri Hiramani s/o Shri Bhawani Dutt, r/o Village Jodiwan, P.O. Behali, Sub Tehsil Nihri, Distt. Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Hiramani S/O Sh. Bhawani Dutt, Village Jodiwan, P.O. Behali, Sub Tehsil Nihri, Distt. Mandi by The Divisional Forest Officer, Sunder Nagar, Distt. Mandi, from time to time during 2008 to June, 2010 and finally during July, 2010 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 1st April, 2000. He served as such up-to 31.7.2010 in Forest Range, Kangoo. On that day i.e. 31.7.2010, in the evening, his services were terminated by the respondent by a verbal order. Before the termination of his

services, neither any notice was given to him nor he was informed about the misconduct, if any. Muster roll for the month of August, 2010 was not issued in his (petitioner's) name by the respondent. During the period of his employment, the respondent used to give him the fictional breaks so that he does not complete 240 days of work. The same amounts to unfair labour practice. His services were re-engaged by the respondent in the year 2011 for a few days. After that, he was re-employed by the respondent in the year 2012, but was not allowed to work continuously for 240 days. His name figures at serial No.326 of the seniority list dated 31.3.2003 issued by the respondent. 60 persons junior to him are serving the respondent/department. He has been discriminated. His seniority has been ignored by the respondent. The latter failed to abide by the principle of 'last come first go'. He did request the respondent time and again to reinstate him in service, but in vain. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, he (petitioner) prays that the termination of his services ordered by the respondent from time to time during the year 2008 to June, 2010 and final termination ordered by the respondent in the month of July, 2010 be upset. The respondent be directed to re-engage him with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The reference and the claim petition regarding the retrenchment w.e.f. the month of July, 2010 are premature. The same have also become in fructuous as the petitioner is continuously working with him (respondent). The services of the petitioner were never disengaged as alleged. His mandays chart is annexure R-1. On merits, it has been owned that the services of the petitioner were engaged as a daily waged labourer in the month of April, 2000. However, it has been pleaded that the petitioner was employed for seasonal work. He used to work intermittently. Neither any artificial/fictional breaks were given to the petitioner nor his services were disengaged as alleged. The petitioner used to work as per his sweet will and convenience. As and when he reported for duty, his services were engaged subject to the availability of the work and the funds. As the petitioner worked intermittently as per his convenience, he could not complete 240 days of work in any calendar year of his engagement. It stands admitted that the name of the petitioner figures at serial No.326 of the seniority list. He worked for the whole month in August, 2010. The petitioner never approached him (respondent) for reengagement etc. He worked in various seasonal forestry works. The principle of 'last come first go' was duly followed. The petitioner is continuously on the rolls of the department at present. There is no question of his being not gainfully employed. No provision of the Act has been flouted. The petition is meritless. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent.

5. Per order dated 15.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during the year 2008 to June, 2010 and finally during the month of July, 2010 is illegal and unjustified as alleged? . . .OPP.
2. Whether the claim petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .OPR.

4. Whether the claim petition is premature as alleged. If so, its effect? . . . OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Partly Yes, Partly No

Issue No.2 : Partly Yes, Partly No

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner, Shri Hiramani stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were engaged for seasonal forestry works depending upon the availability of the work and the budget. He admitted that he is serving the respondent/department after July, 2010. Self stated, his services were disengaged in the month of November, 2012. He denied that he used to remain absent from work and did not complete 240 days of work. He also denied that due to his absence from duties and employment for seasonal forestry works, he could not complete 240 days of service from the year 2008 to June, 2010. He denied that he has given a phoney statement.

10. Conversely, Shri Ajit Thakur, Divisional Forest Officer, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the services of the petitioner were engaged on 01.4.2000. He denied that the fictional breaks were given to the petitioner from time to time. He admitted that the petitioner was not allowed to complete 240 days of work in any year of his engagement. He also admitted that no notice was given to the petitioner after he allegedly left the service. He denied that during the pendency of the claim petition also, artificial breaks were provided to the petitioner.

11. Ex. PW1/B is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/B.

12. Ex. PW1/C is the copy of the seniority list of daily wagers of Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on 1st April, 2000. The respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of the funds and the work. Moreover, the mandays chart Ex. PW1/B reveals that in some years, the petitioner worked for more than 200 days with the respondent/department. In the year 2009, he served the respondent for 234 days. A person working for 234 days in a year cannot be termed as a seasonal worker.

14. The version of the petitioner is that he worked with the respondent/department up-to 31.7.2010. On that day, in the evening, his services were terminated by the respondent wrongly and illegally by a verbal order. The muster roll for the month of August, 2010 was not issued in his name by the respondent/department. It is not the case of the petitioner that the mandays chart Ex. PW1/B (similar to Ex. RW1/B) produced by him is incorrect. The mandays chart reveals that in the month of August, 2010, the petitioner worked for 30 days with the respondent. After that, he worked for the whole months under the respondent from December, 2010 to March, 2011. Since the petitioner served the respondent in the month of August, 2010 for as many as 30 days, I am at a loss to understand as to how it lies in his mouth to say that the muster roll for the said month was not issued in his favour by his opponent and his services were disengaged by the respondent on 31.7.2010 in the evening in a wrongful manner. From the statement made by the petitioner (PW1), it can be gathered that he is still serving the respondent/department. The said fact finds support from the mandays chart Ex. PW1/B. In view of these facts, it can be easily said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent on 31.7.2010 as alleged. As no retrenchment order was passed by the respondent on 31.7.2010, it cannot be said that the termination/retrenchment order is illegal and unjustified.

15. So far as providing the fictional breaks to the petitioner by the respondent from time to time during the year 2008 to June, 2010 is concerned, I will like to say that the said assertion of the petitioner appears to be true. As mentioned earlier, the respondent has not placed/exhibited on the file any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. The respondent (RW1) in his cross examination admitted that work for 240 days in a year was never provided to the petitioner by the department. If the petitioner used to remain absent from his duties, then why the respondent did not issue any show cause notice to him (petitioner) or initiate the disciplinary proceedings against him? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per his sweet will and convenience is incorrect. Artificial/fictional breaks were provided to the petitioner/workman by the respondent which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of the services of the petitioner by the respondent in the month of July, 2010 is not maintainable. The claim petition with regard to the artificial/fictional breaks is maintainable.

16. These issues are decided accordingly.

ISSUE NO.3

17. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

19. While testifying in the Court as PW1, the petitioner has given his age as 27 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

20. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

21. Not pressed.

RELIEF (ISSUE NO.5)

22. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of his services in the month of July, 2010 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from the year 2008 to June, 2010 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service except back wages. The respondent is also directed not to provide the fictional breaks to the petitioner in future. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs.

22A. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 82/2012

Date of Institution : 06.1.2012

Date of Decision : 15.03.2013

Shri Inder Singh s/o Shri Balak Ram, r/o Village Drubal, P.O. Kot, Sub Tehsil Kotli, Distt. Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, HPSEB Electrical Division Mandi, Distt. Mandi, H.P.

. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. J.S. Chauhan, Adv.

For the Respondent : Sh. Abhishek Lakhanpal, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Inder Singh S/O Sh. Balak Ram R/O Village Drubal, P.O. Kot, Sub Tehsil Kotli, Distt. Mandi, H.P. by the Executive Engineer, HPSEB Electrical Division Mandi, District Mandi, (H.P.) during April, 2000 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits, the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 25th September, 1997. He worked as such in Electrical Sub Division Saigaloo up-to 24.4.2000 and completed 240 days of work in each and every calendar year of his employment. At the time of engaging his services, no order was passed by the respondent that he has been appointed for carrying out the work of a specific scheme. In the month of April, 2000 i.e. after 24.4.2000, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. During the course of his employment, the respondent used to give him the fictional breaks. He never absented from his duties. The period of interrupted service is required to be counted towards the continuous service. At the time of his disengagement, the persons junior to him namely Smt. Uma Devi and Sh. Manoj Kumar etc. were retained in service by the respondent. The juniors were also allowed to complete 240 days of work by the respondent. The latter failed to abide by the principle of ‘last come first go’. Immediately, after his retrenchment, he (petitioner) instituted Original Application No. 270/2001 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal, Shimla for the redressal of his grievances. Such Original Application was dismissed by the Hon’ble Administrative Tribunal per order dated 20.7.2004 on the ground that it has no jurisdiction to deal with the same. He (petitioner) was directed to approach the appropriate Court/Forum against his unlawful termination. A demand notice was thereafter served upon the respondent by him. The services of his co-workers including Sh. Dharam Singh s/o Shri Satu were also terminated by the respondent. Shri Dharam Singh etc. challenged the retrenchment orders which were quashed by this Court/Tribunal. The act and conduct of the respondent is illegal and unjustified. He has been discriminated. The juniors have been favored so as to deprive him (petitioner) from the status and privileges of a permanent workman. The respondent has also flouted the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “i) The respondents may kindly be directed to re-engage/re-instate the applicant in service from the date of his illegal oral termination;
- ii) The respondents may kindly be directed to assign seniority and regularize the services of applicant and also to pay back wages for forced unemployment faced by the applicant as a result of illegal oral termination w.e.f. 24.4.2000;

- iii) The entire record of the case viz Muster Rolls etc. be summoned and the Respondent be burdened with cost of the application/petition;
- iv) Any other order/directions which the Hon'ble Court/Tribunal deems just and proper in the interest of justice and fair play may kindly be passed/issued in favour of applicant/petitioner may kindly be granted in accordance with law and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the reference/claim petition is misconceived. The petitioner has no locus standi to sue. He has no cause of action. The petitioner/claimant has approached the Court at a belated stage i.e. after the lapse of almost 12 years. The petition is time barred. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 25.9.1997. He worked intermittently up-to 24.4.2000. The petitioner was appointed against the works of casual nature for a specific period. On the completion of the work, his services stood automatically terminated. During the period of his employment, the petitioner used to willfully remain absent from duty. No artificial/fictional breaks were ever provided to the petitioner. His services were never disengaged as alleged. The petitioner abandoned the job of his own accord and free will. The principle of 'last come first go' was strictly followed. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner has not been discriminated. No provision of the Act has been infringed. The instant industrial dispute is stale and belated. No co-worker of the petitioner has been re-engaged. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 05.9.2012, following issues were struck.

- 1. Whether the services of the petitioner have been wrongly and illegally terminated by the respondent in the month of April, 2000 as alleged? . . .OPP.
- 2. Whether the petitioner has the locus standi to sue? . . .OPP.
- 3. Whether the petitioner has a cause of action? . . .OPP.
- 4. Whether the claim petition is not maintainable in the present form? . . .OPR.
- 5. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? . . .OPR.
- 6. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .OPR.
- 7. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Yes

Issue No.4 : Not pressed

Issue No.5 : Not pressed

Issue No.6 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Inder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he worked from 25.9.1997 to 24.4.2000 with the respondent/Board. He also admitted that he did not work continuously. Self stated, the muster roll used to be provided for small periods. He denied that no person junior to him is serving the respondent and he has given a phoney statement.

9. Conversely, Shri Ravinder Kumar, Assistant Engineer, HPSEB, Electrical Sub Division, Saigloo testified as RW1. He corroborated on oath the contents of the reply filed by the respondent. Ex. RW1/A is his proof affidavit. In the cross-examination, he admitted that neither any notice of retrenchment nor the compensation were given to the petitioner. He also admitted that after the petitioner allegedly left the job no notice was given to him asking him to resume the work. He feigned ignorance about the fact that Smt. Uma Devi etc. were employed on 02.12.1998 and are junior to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner.

10. Ex. PW1/B is the copy of the order dated July 20, 2004 passed by the Hon'ble Administrative Tribunal in O.A. (M) No. 270/2001, titled as Inder Singh vs. Himachal Pradesh State Electricity Board and others. It depicts that the Original Application instituted by the petitioner was disposed of by the Hon'ble Tribunal by holding that it has no jurisdiction in the matter. The applicant/petitioner was given the liberty to approach the appropriate Court/Forum for the redressal of his grievances.

11. Ex. PW1/C is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/B.

12. Ex. PW1/D is the copy of a representation dated 17.2.2008 sent by the petitioner to the Labour Commissioner, Government of Himachal Pradesh, Shimla.

13. Ex. PW1/E is the copy of the Award dated 27.9.2011 passed by my Id. Predecessor in Reference No.164/2007 titled as Shri Dharam Singh vs. The Executive Engineer, Electrical Division, HPSEB, Mandi.

14. Ex. PW1/F is the copy of the Award dated 13.9.2012 rendered by this Court in Reference No.343/2009, titled as Shri Lal Singh vs. The Executive Engineer, HPSEB, Electrical Division, Mandi.

15. Ex. PW1/G is the detail of the mandays in respect of Smt. Uma Devi w/o Shri Parminder Singh working under the respondent.

16. No reference has been received from the appropriate Govt. regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per Section 10 (4) of the Act.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on 25/9/97. The respondent has not placed on the record any document evidencing that the services of the petitioner were engaged for a specific period or work to his knowledge.

18. The version of the petitioner is that in the month of April, 2000, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner calling upon him to resume his duties after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

20. The mandays chart Ex. PW1/C reveals that the petitioner worked with the respondent/Board intermittently from 25.9.1997 to 24.4.2000. He did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

21. The mandays chart Ex. PW1/G clarifies that the services of Smt. Uma Devi w/o Shri Parminder Singh were engaged by the respondent on 02.12.1998. She is junior to the petitioner, who was appointed on 25.9.1997. There is no denial of the fact that Smt. Uma Devi is still serving the respondent/Board. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

22. Otherwise too, per Awards dated 27.9.2011 and 13.9.2012, the copies of which are Exts. PW1/E and F, it has already been held by this Court that the respondent has contravened various provisions of the Act. The industrial disputes raised by the similarly situated workmen namely S/Sh. Dharam Singh and Lal Singh culminated in their favour as is apparent from Exts. PW1/E and F viz. the copies of the Awards.

23. This issue is accordingly decided in favour of the petitioner and against the respondent.

ISSUES NO. 2 AND 3

24. Taking into account my findings on issue No.1 above, it is held that the petitioner has a cause of action. He also has the locus standi to sue since he has been thrown out of the service in a wrongful manner.

25. These issues are also decided in favour of the petitioner.

ISSUES NO. 4 AND 5

26. Not pressed.

ISSUE NO.6

27. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

28. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

29. While testifying in the Court as PW1, the petitioner has given his age as 38 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

30. This issue too is decided in favour of the petitioner and against his opponent.

RELIEF (ISSUE NO.7)

31. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. April, 2000 except back wages. Parties to bear their own costs.

32. The reference is answered in the aforesaid terms.

33. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

34. File after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 273/2012

Date of Institution : 06.07.2012

Date of Decision : 01.03.2013

Shri Jagdish Kumar s/o Shri Lachhi Ram, r/o Village Sojjdu, P.O. Behli, Sub Tehsil Nihri,
Distt. Mandi, H.P.Petitioner.

Versus

The Divisional Forest Officer, Sunder Nagar, District Mandi, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Jagdish Kumar S/O Sh. Lachhi Ram, Village Sojjdu, P.O. Behli, Sub Tehsil Nihri, Distt. Mandi, H.P. by The Divisional Forest Officer, Sunder Nagar, Distt. Mandi, from time to time during 2008 to June, 2010 and finally during July, 2010 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 6th January, 2001. He worked as such up-to 31.7.2010 in Forest Range, Kangoo. On the said date i.e. 31.7.2010 in the evening, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. Muster roll for the month of August, 2010 was not issued in his (petitioner's) favour by the respondent. During the period of his employment, the respondent used to give him the fictional breaks so that he does not complete 240 days of work. The same amounts to unfair labour practice. In the year 2011, his services were re-engaged for a few days by the respondent. After that, in the year 2012, he was re-employed by the respondent. However, he was not allowed to serve for a period of 240 days. His name figures at serial No.361 of the seniority list dated 31.3.2003 of the daily wagers issued by the respondent. 25 persons junior to him are serving the respondent/department. His seniority has been ignored by the respondent. The latter failed to abide by the principle of 'last come first go'. He has been discriminated. From the date of his disengagement, he is unemployed. He requested the respondent time and again to re-engage him, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, he (petitioner) prays that the termination of his services/break in service from time to time during the year 2008 to June, 2010 and final termination order passed by the respondent during the month of July 2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. The reference and the claim petition with respect to the retrenchment in the month of July, 2010 are premature. The same have also become in fructuous as the petitioner is continuously on his (respondent's) rolls. The mandays chart of the petitioner is annexure R-1. His services were never disengaged as alleged. On merits, it has been denied that the petitioner was employed as a daily waged beldar on 06.1.2001. Instead, it has been pleaded that the services of the petitioner were initially engaged as a daily waged labourer for seasonal work in the month of April, 2001. He used to work intermittently as per his sweet will and convenience. As and when the petitioner reported for duty, his services were engaged subject to the availability of the work and the funds. No artificial breaks were ever given to the petitioner. Since the petitioner used to work as per his convenience, he could not complete 240 days of work in any calendar year of his employment. It stands admitted that the name of the petitioner finds mention at serial No.361 of the divisional level seniority list. He worked for the whole month of August, 2010. The services of the petitioner were never retrenched. He never approached him (respondent) for re-engagement etc. The services of the petitioner were utilized to carry out various seasonal forestry works intermittently for a few days in a particular year. Since the petitioner is working with him (respondent), the question of his not being gainfully employed does not arise. The principle of 'first come last go' was strictly followed. No provision of the Act has been flouted. The petition is meritless. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent.

5. Per order dated 15.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during the year 2008 to June, 2010 and finally during the month of July, 2010 is illegal and unjustified as alleged? . . .OPP.
2. Whether the claim petition is not maintainable in the present form? OPR
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .OPR.
4. Whether the claim petition is premature as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Partly Yes, Partly No

Issue No.2 : Partly Yes, Partly No

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS**ISSUES NO.1 AND 2**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Jagdish Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were engaged for seasonal forestry works subject to the availability of the funds. He admitted that after July, 2010 he is serving the respondent/department. Self stated, his services were disengaged in the month of November, 2012. He denied that since he worked in seasonal forestry works and used to remain absent from duty, he could not complete 240 days of work in any year of his employment. He also denied that no fictional breaks were given to him by his opponent and he has instituted a phoney petition.

10. Conversely, Shri Ajit Thakur, Divisional Forest Officer, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the services of the petitioner were engaged w.e.f. 01.4.2001. He also admitted that work for 240 days in a year was not provided to the petitioner by the department. When the petitioner left the job, no notice was given to him. He denied that he is not speaking the truth.

11. Ex. PW1/B is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/B.

12. Ex. PW1/C is the copy of the seniority list of daily wagers of Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003. The names of as many as 386 daily wagers are mentioned in this list. The name of the petitioner figures at serial No.361.

13. The petitioner has not placed on the record any document evidencing that his services were initially engaged as a daily wager by the respondent on 06-1-2001. The respondent in his reply has pleaded that the petitio mandays chart Ex. PW1/B (corresponding to Ex. RW1/B) produced by him is incorrect. From the evidence available on the record, it becomes clear that the services of the petitioner were engaged by the respondent only in the month of April, 2001 and not in the month of January, 2001.

14. The version of the petitioner is that he served the respondent/department up-to 31.7.2010. On that day, in the evening, his services were wrongly and illegally terminated by the respondent by an oral order. Muster roll for the month of August, 2010 was not issued in his favour by the respondent/department. These facts have been denied by the latter.

15. As already mentioned, it is not the case of the petitioner that the mandays chart is incorrect. Ex. PW1/B viz. the mandays chart depicts that the petitioner worked for 30 days each with the respondent/department in the months of August and September, 2010. After that, he served the respondent/department for the entire months of January to March, 2011. Since the petitioner worked with the respondent for the whole months of August and September, 2010, the question of the final termination of his services by the respondent on 31-7-2010, in the evening, does not arise. As no final termination/retranchment order was passed by the respondent in the month of July, 2010 (as alleged), by no stretch of imagination, it can be said that the order in question is bad in the eyes of law. Otherwise too, the petitioner (PW1) in his cross-examination admitted that after the

month of July, 2010, he is serving the respondent/department. The claim petition to this extent is meritless and not maintainable.

16. The respondent has not placed/exhibited on the record any document to establish that the services of the petitioner were engaged for seasonal forestry works from time to time. The mandays chart Ex. PW1/B reveals that in the years 2008 and 2009, the petitioner served the respondent for 207 and 219 days respectively. A person working for almost 240 days in a year cannot be termed as a seasonal worker.

17. The respondent (RW1) in his cross-examination admitted that the work for 240 days in a year was never provided to the petitioner by the department. If the petitioner used to remain willfully absent from duties time and again then why no show cause notice was issued to him by the respondent or the disciplinary proceedings were initiated against him by the respondent/employer? The reasons to that effect being obscure coupled with the admission made by RW1 go to show that the artificial/fictional breaks were provided to the petitioner by the respondent which amounts to unfair labour practice as per Schedule Fifth of the Act. The period of fictional breaks from the year 2008 to June, 2010 is required to be counted for the purpose of continuous service. The claim petition in this respect is maintainable.

18. These issues are decided accordingly.

ISSUE NO. 3

19. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

21. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

23. Not pressed.

RELIEF (ISSUE NO .5)

24. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of his services in the month of July, 2010 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from the year 2008 to June, 2010 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service except back wages. The respondent is also directed not to provide the fictional breaks to the petitioner in future. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H. P.

Ref No. : 434/2009

Date of Institution : 28-08-2009

Date of Decision : 18-03-2013

Shri Jitender Singh s/o Shri Kirpa Ram, r/o Village Dowaru, P.O. Sakroa, Tehsil Karsog,
District Mandi, H.P. *. .Petitioner*

Versus

Chairman-cum-Managing Director, H.P. Ex-Serviceman Corporation Hamirpur, District
Hamirpur, H.P. *. . Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Bhardwaj, Adv.

For the Respondent : Sh. Anuj Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Shri Jitender Singh S/O Shri Kirpa Ram by Chairman-cum-Managing Director, H.P. Ex-Serviceman Corporation Hamirpur, District Hamirpur, H.P. *w.e.f.* 09-09-2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent on 10th June, 2001 as a Security Guard against the post reserved for Ex-Service men (ESM). He worked as such with Satluj Jal Vidhyut Nigam Limited, Nathpa Jhakri (SJVN) upto 21st August, 2004. He discharged his duties sincerely and honestly. Monthly wages of Rs. 5,525/- were being paid to him by the SJVN. On 21-8-2004, his services were disengaged by the respondent without assigning any reason. Before the termination of his services, neither any notice was given to him nor he was afforded an opportunity of being heard. The same amounts to unfair labour practice. He requested the respondent to re-engage him, but in vain. Retrenchment compensation was also not paid to him. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Section 25-F of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). As such, he (petitioner) prays that the termination of his services ordered by the respondent in the month of August 2004 *w.e.f.* 09-9-2004 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that this Court has no jurisdiction to hear and decide the matter. The claim petition is time barred. The petitioner is estopped from filing the claim petition by his act, conduct and acquiescence. The claim petition is not maintainable in the present form. Original Application No.3034/2004, titled as Jitender Singh vs. The H.P. Ex-Servicemen Corporation and another has already been dismissed by the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal at Shimla vide order dated 17-7-2006. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. On merits, it has been owned that the services of the petitioner were engaged as a Security Guard with SJVN. Shri Kirpa Ram, the father of the petitioner, is an ex-serviceman. He (Shri Kirpa Ram) was working as a Security Guard on contractual basis with the NJPC Limited, Jhakri. Shri Kirpa Ram moved an application before him (respondent) for adjustment of his son (petitioner) in his (Kirpa’s) place as a Security Guard on contract basis for a period of 12 months. Considering the request of the father of the petitioner and on compassionate grounds, the petitioner was called for interview through his father. Thereafter, he was offered the post of Security Guard on contract basis under the existing policy. At that time the guidelines for sponsoring and operating of security agencies and related activities issued by the Director General Resettlement, Army Headquarters, New Delhi (DGR) were in force. Para 21 of the said guidelines is annexed as annexure R-2 to the reply. The appointment of the petitioner as a Security Guard was purely on contractual basis initially for a period of one year. The same was to be extended after considering his performance, act and conduct. The services of the petitioner were engaged and were totally governed by the guidelines issued by the DGR. Now the DGR has issued amended guidelines dated 01-6-2003 for sponsoring and operating the security agencies. After the issuance of the subsequent guidelines dated 01.6.2003 by the DGR, the appointment of the petitioner became contrary to such guidelines. The petitioner was employed by him (respondent) as a Security Guard with SJVN provisionally. The documents relating to his service are in the possession of SJVN. SJVN is a necessary party to the petition. The principal employer of the petitioner viz. SJVN refused to accept the civilians as security guards in the organization. Accordingly, the services of the petitioner and other security guards (all civilians) were terminated in accordance with law. Amended guidelines issued by the DGR make it clear that 100% ESM only be employed

by the State run ESM Corporations within their respective States for security jobs like the Security Guards, Gunmen and Security Supervisors etc. Only ESM (Ex-Servicemen) have been appointed as security guards in place of the petitioner and others whose services were disengaged being the civilians. Moreover, the services of the petitioner and other civilians have been terminated by the principal employer viz. SJVN per letter dated 23.6.2008. Being aggrieved by the act of the principal employer, he (petitioner) had preferred an Original Application bearing No.3034/2004 which was rejected by the Hon'ble Administrative Tribunal. The policy regarding employment of the security guards has been changed by the DGR. Only ESM have been appointed and can be appointed as the security guards. He (respondent) has been debarred from engaging the civilians as security guards. The claim of the petitioner does not survive. The petitioner has intentionally and knowingly concealed the material fact regarding the dismissal of the Original Application instituted by him. The demand notice issued by the petitioner was duly replied. No provision of the Act has been infringed. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been pleaded that his services were engaged by the respondent. SJVN has nothing to do with the engagement and termination of his services. The wages were also being paid to him (petitioner) by the respondent. It stands admitted that he was engaged as a Security Guard with SJVN in place of his (petitioner's) father Shri Kirpa Ram, who is an ex-serviceman. He (petitioner) performed his duties diligently and honestly from 10-6-2001 to 21-8-2004 on contractual basis. He completed 240 days of work in each and every calendar year of his engagement. His appointment as a Security Guard was purely on contract basis initially for one year. The term of appointment was extended till August, 2004 after taking into account his act, conduct and performance. He was employed as per the guidelines issued by the DGR at the time of his engagement. The change of guidelines by the DGR cannot have the retrospective effect. The principal employer i.e. SJVN is still accepting the civilians as security guards in the organization. The civilians are serving as security guards till date. It is wrong to say that 100% ESM only can be employed by the respondent/corporation. Hon'ble Administrative Tribunal had directed him (petitioner) to approach a competent Court of law for the redressal of his grievances.

5. Per order dated 25.5.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner *w.e.f.* 21-8-2004 is violative of the provisions of under Section 25-F of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . . OPP.
2. Whether this Court has no jurisdiction to decide the present reference as alleged. If so, to what effect? . . . OPR.
3. Whether the reference is not maintainable as alleged. If so, to what effect? . . . OPR.
4. Whether the reference is barred by limitation as alleged. If so, to what effect? . . . OPR.
5. Whether the reference is bad for non joinder of the necessary party as alleged. If so, to what effect? . . . OPR.
6. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : No

Relief: Claim petition allowed in part *vide* operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

8. The petitioner Shri Jitender Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that he never served the army or paramilitary forces. His father is an ex-serviceman who had moved an application before the respondent/corporation for his (PW1's) employment. He admitted that pursuant to the application preferred by his father, he (PW1) was appointed on 10-6-2001 in the SJVN on contract basis. He also admitted that on 08-9-2004, when his services were disengaged, 8-10 other civilians were removed from service. Further, he admitted that he had instituted an Original Application before the Hon'ble Administrative Tribunal which was dismissed in default. A mention qua the Original Application has not been made by him in the present reference/claim petition. He denied that the services of all the civilians have been terminated by the respondent. Self stated, some of the civilians are working even now. He denied that only the ex-servicemen are employed by the respondent/corporation. He admitted that SJVN is not a party to the lis.

9. Conversely, Shri Milap Chand, Chairman-cum-Managing Director, H.P. Ex-Servicemen Corporation, Hamirpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that before the termination of the services of the petitioner, no notice was given to him. Self stated, the principal employer viz. SJVN requested time and again that they need only the ESM and not their children who are the civilians and have not undergone the security training. He admitted that the petitioner is the son of an ex-serviceman. Volunteered, for the purpose of employment, the siblings of ESM are treated as civilians. He admitted that the petitioner was deputed as a Security Guard in the SJVN by his (respondent's) office. He also admitted that the services of the petitioner have been disengaged by the corporation. No retrenchment compensation was paid to the petitioner. DGR had revised the guidelines relating to the appointment and stopped the engagement of the civilian children of the ESM. He admitted that the petitioner served continuously from June, 2001 to September, 2004. He denied that the services of the petitioner have been disengaged in a wrongful manner. He does not know that Shri Jagdish Singh etc. are the civilians who are still serving as security guards. He admitted that Shri Jagdish Singh has been re-employed as per the Order/Award dated 31-7-2010 passed by the Ld. Labour Court at Shimla. He does not know that Shri Jagdish Singh is the ward of an ex-serviceman and falls in civilian category. He admitted that the petitioner had worked for 240 days. He denied that the children of ESM who are termed as civilians are still being employed by the corporation. Self stated, only those children/ward of the ESM are considered for employment who have undergone the security training and are accepted by the principal employer. He is not aware of the fact that Shri Kamlesh Kumar s/o Shri Dilip Singh was appointed as a security guard in the month of December, 2011 without under-going any security training.

10. Ex. PW1/B is a certificate issued by Deputy Controller (F&A), HP Ex-Servicemen Corporation, Hamirpur. It depicts that the petitioner was engaged as a Security Guard with SJVN Ltd., Jhakri through the corporation. He worked from 10-6-2001 to 08-9-2004.

11. Ex. PW1/C is the detail of the persons appointed by the respondent/corporation *w.e.f.* 29-7-2006 to 29-7-2007.

12. Mark-A is the copy of the Award dated 31st July, 2010 rendered by the Id. Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla in Reference No.163/2006, titled as Jagdish Singh vs. The Chairman-cum-Managing Director, Satluj, Jal Vidut Nigam Limited and others. It unfolds that the retrenchment of the services of the petitioner (Shri Jagdish Singh), who is not an ex-serviceman, was set aside. The respondent/corporation was directed to reinstate him in service.

13. Ex. RW1/B is the application moved by Shri Kirpa Ram (father of the petitioner) before the respondent. As per this application, the applicant Shri Kirpa Ram, who is admittedly an ex-serviceman, requested the respondent to engage the services of his son Shri Jitender Singh (petitioner) as a Security Guard in his place.

14. Ex. RW1/C is the copy of the guidelines issued by the DGR for sponsoring and operating of security agencies as well as related activities.

15. Ex. RW1/D is the copy of the revised guidelines dated 01-6-2003 issued by the DGR with regard to the sponsoring and operating of security agencies etc.

16. Ex. RW1/E is the copy of a letter dated 23-6-2008 written by Dy. Manager (P&A), SJVN Limited, Jhakri to the respondent. Vide this letter clarification was sought from the respondent regarding 100% deployment of Ex-Servicemen in NJHPS (SJVNL), Jhakri through the corporation.

17. Ex. RW1/F is the copy of the order dated July 17, 2006 pronounced by the Hon'ble Administrative Tribunal in O.A. No.3034/2004, titled as Shri Jitender Singh vs. The H.P. Ex-Serviceman Corporation and another.

18. It is the admitted case of the parties that the services of the petitioner were engaged as a Security Guard in place of his father pursuant to an application Ex. RW1/B moved by Shri Kirpa Ram (the father of the petitioner). From the evidence available on the record including admissions made by the respondent (RW1), it can be gathered that the petitioner was appointed by the respondent/corporation and, thereafter, deputed as a Security Guard in SJVN Limited, Jhakri. He (petitioner) served the SJVN continuously from June, 2001 to 08-9-2004 and completed 240 days of work in each and every calendar year of his employment. Admittedly, when the services of the petitioner were engaged by the respondent, the guidelines dated 28-2-1996 issued by the DGR, the copy of which is Ex. RW1/C, were in force. The petitioner was eligible to be employed as a Security Guard being the son of an ex-serviceman because of which his services were engaged by the respondent.

19. The version of the respondent is that the guidelines for sponsoring and operating of security agencies as well as the related activities were changed by the DGR on 01-6-2003. The copy of the subsequent guidelines dated 01-6-2003 issued by the DGR is Ex. RW1/D. Since the petitioner did not fulfill the requirements as contained in the guidelines dated 01-6-2003, the SJVN refused to continue with his (petitioner's) services because of which the services of the petitioner were terminated.

20. It is well known that the changed/new guidelines will become operational prospectively and not retrospectively. As already mentioned, when the services of the petitioner were engaged in the month of June, 2001, he was eligible for being appointed as a Security Guard.

His services cannot be disengaged by applying the new guidelines dated 01-6-2003 issued by the DGR retrospectively to his disadvantage. It is not the case of the respondent that before effecting any change in the service conditions of the petitioner, a notice as required under Section 9-A of the Act was served upon him. To my mind, by applying the guidelines dated 01-6-2003 issued by the DGR retrospectively, the respondent has flouted the basic principles of law.

21. Section 25-F of the Act reads thus:—

“25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until;—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

22. At the cost of reiteration, I will like to add that it has come in the statement of the respondent (RW1) that the petitioner had completed 240 days of work in a block of 12 calendar months anterior to the date of his termination. There is nothing on the record to show that the provisions of the above quoted Section were complied with by the respondent before the retrenchment of the services of the petitioner. The respondent has contravened the provisions of Section 25-F of the Act because of which the termination of the services of the petitioner is illegal and unjustified.

23. Otherwise too, Mark-A i.e. the copy of the Award dated 31-7-2010 rendered by the Id. Presiding Judge, H.P. Industrial Tribunal-cum-Labour Court, Shimla in Reference No. 163/2006, titled as Jagdish Singh vs. Chairman-cum-Managing Director, Satluj Jal Vidut Nigam Limited and others clarifies that the petitioner Shri Jagdish Singh, who is not an ex-serviceman, was ordered to be reinstated in service. The termination of his services ordered by the respondent No.2 on somewhat similar grounds was set aside.

24. Such being the situation, I have no hesitation to conclude that the services of the petitioner were wrongly and illegally dispensed with by the respondent.

25. While testifying in the Court as PW1, the petitioner has given his age as 30 years. It is common knowledge that a young man like the petitioner will not sit at home during the period, he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons he is not entitled to the back wages. 26. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

27. Not pressed.

ISSUE NO.3

28. Relying upon Shankar Dass versus State of Himachal Pradesh and others, 1979 Sim. L.C. 298 (DB), the Id. counsel for the respondent contended that the petitioner has suppressed a

material fact from this Court i.e. the dismissal of the Original Application by the Hon'ble Administrative Tribunal. Due to this reason, the petitioner be shown the doors of the Court/Tribunal.

29. Ex. RW1/F is the copy of the order dated July 17, 2006 passed by the Hon'ble Administrative Tribunal in O.A. No.3034/2004, titled as Shri Jitender Singh vs. H.P. Ex Serviceman Corporation and another. The order passed by the Hon'ble Administrative Tribunal is reproduced below verbatim for ready reference:—

“17.7.2006 Present: None for the applicant.

None for the respondents.

This original application is dismissed for default of appearance of the applicant.

Sd/-
(M.R.Verma, J (Retd.)
Chairman”.

30. The perusal of the order discloses that the Original Application was dismissed in default as the applicant/petitioner failed to appear on the date fixed before the Hon'ble Administrative Tribunal. At the time of the dismissal of the Original Application, the respondents and their counsel were also not present. The Original Application was dismissed under Order 9 Rule 3 CPC and not under Order 9 Rule 8 CPC. Dismissal of the Original Application under Order 9 Rule 3 CPC does not debar the applicant/petitioner from filing a fresh claim petition. Otherwise also, the Hon'ble Administrative Tribunal had no jurisdiction to deal with the matters falling within the ambit of the Act.

31. Taking into account the above noted facts, it cannot be said that the reference/claim petition is not maintainable. The petitioner/claimant cannot be non-suited for the reason that he has not pleaded in the statement of claim/demand that the Original Application instituted by him was dismissed in default by the Hon'ble Administrative Tribunal. In the rejoinder, which was filed with the permission of the Court and is a part of the pleadings, it has been specifically pleaded that the Hon'ble Administrative Tribunal had directed him (applicant/petitioner) to approach the appropriate Court/Forum for the redressal of his grievances.

32. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

33. Not pressed.

ISSUE NO.5

34. The pleadings of the parties and the evidence adduced by them make it abundantly clear that the services of the petitioner were engaged and disengaged by the respondent. After his appointment as a Security Guard, the respondent had deputed the petitioner in SJVN Limited, Jhakri. The wages were being paid to the petitioner by the respondent/corporation. Relationship of master and servant exists between the parties. SJVN is/was merely an outsourcing agency. It is not a necessary party to the petition.

35. This issue too, is decided in favour of the petitioner and against the respondent.

RELIEF (ISSUE NO.6)

36. As a sequel to my findings on the various issues above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 09.9.2004 except back wages. Parties to bear their own costs.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

39. File after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 119/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Kaku s/o Shri Anant Ram, r/o Village Suan, P.O. Kuthera, Tehsil Joginder Nagar,
District Mandi, H.P. *.Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Kaku S/O Shri Anant Ram R/O Village Suan, P.O. Kuthera, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2002 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.5.2003 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.5.2003 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wage by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of August, 2002. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his

(respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2002 to August, 2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Kaku (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others. 14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the years 2002/2003 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.5.2003.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar

and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 33 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to

31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 272/2012

Date of Institution : 06.07.2012

Date of Decision : 01.03.2013

Shri Kishore Kumar s/o Shri Atma Ram, r/o Village & Post Office Doghari, Tehsil Sunder Nagar, Distt. Mandi, H.P. . .*Petitioner.*

Versus

The Divisional Forest Officer, Sunder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Kishore Kumar S/O Sh. Atma Ram, Village & Post Office-Doghari, Tehsil Sunder Nagar, Distt. Mandi, H.P. by The Divisional Forest Officer, Sunder Nagar, Distt. Mandi, during July, 2010 without following the

provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 1st April, 1998. He served as such continuously in Forest Range, Kangoo up-to 31.7.2010. On the said date i.e. 31.7.2010 in the evening, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. The muster roll for the month of August, 2010 was not issued in his (petitioner's) favour by the respondent. During the period of his employment, the respondent used to give him fictional breaks so that he does not complete 240 days of work. The same amounts to unfair labour practice. In the year 2011, he was employed for a few days by the respondent. After that, his services were engaged by the respondent in the year 2012. His name does not figure in the seniority list prepared by the respondent. Approximately, 300 workmen junior to him are working under the respondent. At the time of engaging/re-engaging the juniors an opportunity of re-employment was not afforded to him. His seniority has been ignored by the respondent. He has been discriminated. The respondent failed to abide by the principle of 'last come first go'. He requested the respondent time and again to re-engage his services, but in vain. From the date of the retrenchment of his services, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, he (petitioner) prays that the termination order dated 31.7.2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable as no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner. The reference regarding retrenchment w.e.f. July, 2010 and the claim petition are premature and have become in fructuous. The services of the petitioner were never disengaged as alleged. He is continuing on his (respondent's) rolls as a beldar. The mandays chart of the petitioner is annexure R-I. On merits, it has been denied that the petitioner was employed as a daily waged beldar on 01.4.1998. Instead, the services of the petitioner were engaged as a daily waged labourer for seasonal work in the month of April, 2000. He used to work intermittently as is evident from the mandays chart annexure R-I. No artificial breaks were ever given to the petitioner as alleged. He used to work as per his sweet will and convenience. As and when the petitioner reported for duty, his services were engaged depending upon the availability of the work and funds. The petitioner never completed 240 days of work in any calendar year of his engagement. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner was an intermittent worker. He worked for the whole month in August, 2010. The petitioner never approached him (respondent) for re-engagement. As and when the petitioner came present, his services were utilized for carrying out the seasonal forestry works. The principle of 'last come first go' was strictly followed. No provision of the Act has been flouted. Since the petitioner is continuously working with him (respondent), the question of his not being gainfully employed does not arise. The petition is meritless. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent.

5. Per order dated 15.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. July, 2010 is illegal and unjustified? . . .OPP.
2. Whether the claim petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .OPR.
4. Whether the claim petition is premature as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Issue No.4 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Kishore Kumar (pt.) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were engaged for seasonal work only. He admitted that after July, 2010, he is serving the respondent/department. Self stated, his services were disengaged in the month of November, 2010. He denied that he used to remain absent from his duties and did not complete 240 days of work in any year of his employment. He even denied that the respondent/department used to follow the principle of 'last come first go' on the exhaustion of the budget. He and the others are working under the respondent at present. Volunteered, the breaks are provided to him by the respondent from time to time. He denied that he has instituted a phoney petition.

10. Conversely, Shri Ajit Thakur, Divisional Forest Officer, Sunder Nagar (respondent), testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him. In the cross-examination, he denied that the services of the petitioner were engaged on 01.4.1998. He admitted that 240 days of work was not provided in any calendar year to the petitioner by the department. He also admitted that when the petitioner allegedly left the service in the month of July, 2010, no notice was given to him asking him to resume the work. Departmental proceedings were also not initiated against the petitioner. Self stated, the services of the petitioner were re-engaged in the month of August, 2010 and he is working continuously. He admitted that the persons junior to the petitioner are serving under him (respondent).

11. Ex. PW1/B is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/B.

12. Ex. PW1/C is the copy of the seniority list of daily wagers working in Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003.

13. No reference has been received from the appropriate Govt. regarding providing the artificial/fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference as per Section 10(4) of the Act.

14. The respondent has not placed on the record any document evidencing that the services of the petitioner were engaged for seasonal forestry works from time to time.

15. The version of the petitioner is that his services were initially engaged as a daily waged beldar by the respondent on 1st April, 1998. He worked continuously with the respondent/department up-to 31.7.2010. On that day, in the evening, his services were disengaged by the respondent by an oral order wrongly and illegally. While denying these facts, the respondent has pleaded that the petitioner was appointed only in the month of April, 2000. He used to work intermittently as per his sweet will. The petitioner abandoned the job of his own accord and free volition time and again. His services were never terminated in the month of July, 2010 as alleged.

16. In para No.1 of the statement of claim/demand, the petitioner has pleaded that the muster roll for the month of August, 2010 was not issued in his favour by the respondent. This assertion of the petitioner is totally false and baseless in view of the mandays chart Ex. PW1/B produced by him. It is not the case of the petitioner that the mandays chart Ex. PW1/B (corresponding to Ex. RW1/B) is incorrect. The mandays chart clarifies that the services of the petitioner were initially engaged in the month of April, 2000 and he worked intermittently up-to the month of July, 2010. Not only this, the petitioner worked for 30 days in the month of August, 2010 and, thereafter, 30 days each in the months of November and December, 2010. Since the petitioner served the respondent/department in the month of August, 2010, his version that the muster roll for the said month was not issued in his favour by the respondent is totally false and baseless.

17. The mandays chart Ex. PW1/B reveals that even after July, 2010, the petitioner is serving the respondent/department. During his cross-examination, the petitioner (PW1) admitted that even now he is serving the respondent. Since the petitioner is in the continuous employment of the respondent, the question of the termination of his services by the latter on 31.7.2010 in the evening, does not arise.

18. As no termination order was passed by the respondent in the month of July, 2010, by no stretch of imagination it can be said that the impugned order is illegal and unjustified. The claim petition is not maintainable in the present form. The petitioner, who is telling the lies, is not entitled to any relief.

19. These issues are decided against the petitioner and in favour of the respondent.

ISSUES NO.3 AND 4

20. Not pressed.

RELIEF (ISSUE NO.5)

21. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 138/2007

Date of Institution : 01.11.2007

Date of Decision : 11.03.2013

Shri Kuldeep Singh s/o Shri Nain Singh, r/o Village Salon Mondal, P.O. Harlog, Tehsil Ghumarwin, District Bilaspur, H.P. *.Petitioner.*

Versus

1. The Agriculture Engineer, Bhangrotu, Tehsil Sadar, District Mandi, H.P.
2. The Sub Division Soil Conservation Officer, Ghumarwin, District Bilaspur, H.P. *.Respondent(s).*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.K. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Kuldeep Singh S/O Shri Nain Singh workman by the Agriculture Engineer, Bhangrotu, Tehsil Sadar, District Mandi, H.P. (2) The Sub Division Soil Conservation Officer, Ghumarwin, District Bilaspur, H.P. w.e.f. 19-07-1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

“1. That the verbal termination/retrenchment of the claimant w.e.f. 18.07.96 may be held void-ab-initio and he may be held in continuous appointment of the respondents with all consequential benefits till date.

2. That the respondent-department may be directed to prepare the seniority list of the daily wage employees in the department and thereafter to regularize the claimant in accordance with Law.

3. That the claimant may also be awarded 2 lacs compensation form the respondents against pain, suffering and lowering down the status of claimant in the society.

4. That record of the case may be summoned from respondents for the perusal of this Hon'ble Court.

5. That the costs of the original application may be allowed in favour of the claimant.

6. That any other order deemed just and proper may be passed in favour of the claimant, keeping in view the facts and circumstances of the case”.

3. On notice, the respondents appeared. They submitted joint reply controverting the averments made in the petition/statement of claim. The reply is reproduced below verbatim for ready reference:—

“1. The soil conservation wing of department of Agriculture is mandated to formulate and execute need based schemes for the welfare of farming community whose source of livelihood is small land holdings. Soil conservation sub divisions have been opened and operationalized at focal points in all the districts of the Pradesh. In all there are 20 soil conservation sub divisions in the Pradesh.

2. To cater to the needs of farmers of district Bilaspur, soil conservation sub division at Ghumarwin is functioning and sub divisional soil conservation officer is the Incharge of the sub division. He is further supported by the section incharges i.e. junior engineer/agriculture development officers in field.

3. That soil conservation wing of the department of Agriculture formulate natural resource management schemes which interalia includes vegetative and engineering measures to control soil erosion, water harvesting schemes lime check dams, water storage tanks to harvest rain water and minor irrigation schemes where water potential exist. The main objective of formulation and execution of these schemes is to protect valuable fertile soil of farmers fields and to increase production and productivity of crops by providing life saving/assured irrigation facilities to the cultivated fields owned by the farmers on community basis priorlised.

4. That the need based schemes are and estimates are prepared so that these could be sanctioned as per availability of budget. While schemes are prioritized, it is ensured that benefit of schemes must flow to the farming community uniformly throughout the district and schemes are executed/completed in a time bound manner.

5. That the sanctioned schemes are executed in such a way that these must be completed within the sanctioned amount and execution period should not coincide with the growing period of crops or rainy season. This implies that execution of soil conservation schemes is seasonal basis and is not continuous.

6. That for execution of the soil conservation and water management schemes the following are the guiding principals.

- (a) The schemes must be completed within the financial year and within the budget provided as per estimate of the scheme.
- (b) After execution and completion of the scheme the same is handed over to the beneficiary farmers for maintenance and operation.
- (c) The schemes are executed and completed by engaging local Labour both skilled and unskilled and wages are paid as per rates approved by the State Govt. from time to time.
- (d) The account of expenditure incurred on wage component and material components is maintained in Muster rolls and material at site register respectively.
- (e) The muster rolls and material at site registers are issued to the section Incharges after a particular scheme is sanctioned by the sub divisional soil conservation officer of the sub division.

7. That during the period from 11/88 to 5/96. 76 muster rolls were issued by the sub divisional soil conservation officer, Ghumarwin for the execution and implementation of 36 different soil and water conservation schemes in Ghumarwin block. There are three blocks in district Bilaspur, therefore, schemes executed in other blocks and labourers worked for their execution are manifold.

8. That during the implementation and execution of aforesaid 36 schemes 665 skilled and unskilled labourers worked during the period 11/88 to 5/96 and 12,851 mandays were created. Sh. Kuldeep Singh was one of the labourers and he also worked as per availability of work under these schemes. He was also paid wages alongwith other workers and labourers. Disengagement of workers was automatic and co-terminous with the completion of particular scheme/schemes. For perusal of Hon'ble Court detail of schemes and labourers engaged for their implementation/execution is enclosed as per Annexure-R/I. 9. From Annexure-A-I it is amply clear that muster rolls were issued to engage specific number of labourers for the execution of a particular scheme and the number was proportionate to the quantum of work available under a particular scheme. It is also clear that Sh. Kuldeep Singh worked intermittently and not continuously at his own. Therefore onus for not working regularly squarely lies on the worker and not on the department as alleged.

10. That during the year, 1996, greater emphasis was laid for conservation of natural resources and augmentation of water resources to increase production and productivity of crops. It was decided that henceforth all the schemes of soil and water conservation shall be executed in a participatory mode through Panchayati Raj Institutions and local committees of users to ensure transparency and to create durable assets. Thus the labourers both skilled and unskilled were engaged by the local committees and not by the department for the implementation and execution of all the schemes formulated by the department. Copies of notification issued by the Financial Commissioner-cum-Secretary (Panchayati Raj) to the govt. of H.P. dated 31.7.1999 and proceeding of meeting held on 5th June 1996 is enclosed as per Annexure-R/2 and Annexure-R/3 respectively.

11. That with the changed modus operandi of implementation of soil conservation schemes Sh Kuldeep Singh worked for some time during June and July, 1996 and left work at his own. A copy of letter from Up Pradhan of Committee constituted for the execution of crate work in Village

Rohin is enclosed as per Annexure-R/4. As per contents of this letter, it is clear that Sh. Kuldeep Singh worked during June and July, 1996 and left work at his own. Therefore, the his plea that he was disengaged is neither correct nor based on any documentary evidence and therefore can't be accepted as correct. conservation section. Copy of judgement dated 27.10.1999 is enclosed as per Annexure –R/5". In these circumstances, the respondents pray that the petition in hand being not based on the material facts, arbitrary, false and meritless be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 11.11.2010, following issues were struck by my Id.

Predecessor:

1. Whether the termination of the petitioner w.e.f. 19.7.1996 is violative of the provisions of Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . .OPP.
2. Whether the petition is not maintainable as alleged. If so, to what effect? . .OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect? . .OPR.
4. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Kuldeep Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he stated a number of facts which do not find mention in the statement of claim/demand. He also stated that he had completed 240 days of work in each and every calendar year of his engagement. His services have been terminated in violation of the provisions of Section 25-F and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). In the cross-examination, he admitted that he was employed by the Soil Conservation Department. The said department undertakes the work of building small check dams, preventing the soil erosion and construction of the tanks depending upon the budget. He worked in different schemes continuously. Local labour was engaged for carrying out the work. He denied that at the time of the issuance of the muster roll in his name, it was conveyed to him that his services will come to an end on a particular date and exhaustion of the budget. In the month of July, 1996, he and Shri Piar Singh were working on Check Dam, Rohin. Shri Thakur Singh etc. were also working with them. Shri Thakur Singh is junior to him (PW1) and his services have been

regularized. He admitted that during the month of July, 1996, the work of Check Dam, Rohin was being looked after by Shri Kanshi Ram (Up Pradhan) and others. He feigned ignorance about the fact that Shri Kanshi Ram had forwarded a report to the department that he (PW1) and Shri Piar Singh have voluntarily left the job on 18.7.1996. He does not know that Shri Amar Singh etc. had instituted a similar claim petition which was dismissed by the Court. Self stated, Shri Thakur Dass had filed a case on the same facts and his services have already been regularized. He denied that the facts of the case of Shri Thakur Singh are/were different than his (PW1's) case. He refuted that neither any person junior to him has been retained in service by the respondents nor the services of the junior persons have been regularized.

10. Conversely, Shri Albel Singh Thakur, Sub Divisional Soil Conservation Officer, Ghumarwin (respondent No.2), testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him. In the cross examination, he admitted that as per the record the petitioner had worked for 240 days. He does not know that the work of the tank was started on 05.6.1996 and completed on 18.7.1996. He denied that the services of the petitioner were disengaged in a wrongful manner and he has given a phoney statement.

11. Ex. PW1/B is the copy of an office order dated 7th August, 2006 issued by the Director of Agriculture, Himachal Pradesh. It depicts that the services of many daily waged workers working in different districts of the State of Himachal Pradesh were regularized. The services of Shri Thakur Singh s/o Shri Bakshi Ram serving in the office of the respondent No.2 were also regularized.

12. Ex. PW1/C is the copy of a letter written by the Director of Agriculture, Himachal Pradesh to Shri Piar Singh, the companion of the petitioner. As per this letter, Shri Piar Singh was informed that the posts of Class-IV regular employees will be filled as per the seniority or the instructions issued by the Government of Himachal Pradesh.

13. Ex. PW1/D is the copy of an application dated 30.1.96 written by the petitioner to the respondent No.2 for preparation of the seniority list.

14. Ex. PW1/E is the copy of the report made by S/Sh. Rohali Ram and Kanshi Ram the Pradhan and Up Pradhan of the committee of village Rohin. It unfolds that the petitioner and others worked on the check dam from 05.6.1996 to 18.7.1996 under the committee.

15. Exts. PW1/F to M are the copies of the correspondence which took place between the petitioner and the authorities from time to time.

16. Ex. PW1/N is the copy of a resolution dated 30.11.1995 passed by the agriculturists of village Salon Mondal. A committee was constituted to carry out the work for the construction of a tank for soil conservation. Sh. Munshi Ram was appointed as Pradhan of the Committee.

17. Ex. PW1/O is the mandays chart relating to the petitioner.

18. Ex. RW1/B is the copy of the authority letter issued by the Divisional Engineer (Soil Cons.), Central Zone, Mandi at Bhangrotu, District Mandi. As per this letter, the respondent No.2 was authorized to attend the Court and appear as a witness.

19. Ex. RW1/C is the mandays chart which corresponds to Ex. PW1/O.

20. Ex. RW1/D is also the mandays chart pertaining to the petitioner. In it the details of the schemes have been mentioned in which the petitioner worked from time to time.

21. Ex. RW1/E is the copy of a notification dated July 31, 1996 issued by the Financial Commissioner-cum-Secretary (Panchayati Raj) to the Government of Himachal Pradesh. Vide this notification, various powers, functions and responsibilities were entrusted to the Panchayati Raj Institutions. The approved schemes for land water conservation were to be executed by the Panchayats under the technical guidance of the staff of the department.

22. Ex. RW1/F is the copy of the proceedings of the meeting held on 5th June, 1996 in the office of the respondent No.1 regarding the schemes/projects being executed by the department.

23. Ex. RW1/G is the copy of the letter written by Shri Kanshi Ram to the respondent No.2. He informed the authorities that the petitioner and Shri Piar Singh worked up-to 18th July, 1996 on Check Dam, Rohin and thereafter, left the job. Ex. RW1/H is the english version of Ex. RW1/G.

24. Ex. RW1/I is the copy of the muster roll which was issued for the month of August, 1996 by Shri Kanshi Ram, Up Pradhan of the Check Dam Committee. It was highlighted in the muster roll that the petitioner and Shri Piar Singh willingly left the job. They were verbally requested to resume the work, but in vain.

25. Ex. RW1/J is the copy of the Award dated 27.10.1999 pronounced by the Id. Presiding Judge, H.P. Labour Court, Shimla in Reference No.132 of 1996, titled as Shri Rattan Singh and 4 others versus Sub-Divisional Soil Conservation Officer and another.

26. Exts. R-A to R-G are the copies of the receipts and MBs evidencing that the construction work of Crate Check Dam, Rohin was got done from a committee headed by Shri Kanshi Ram.

27. Ex. R-H is the copy of the muster roll for the month of May, 1996. It reveals that the petitioner worked during the said month for the construction of the retaining wall at Bhundal.

28. In the claim petition, the petitioner has no where mentioned his date of engagement. He did not utter a single word to the effect that he had completed 240 days of work in each and every calendar year of his employment or in a block of 12 calendar months preceding the date of his termination i.e. 18/19th July, 1996. Even the petitioner has not pleaded that at the time of the termination of his services, any person junior to him was retained in service by the respondents or after his retrenchment, new/fresh hands have been engaged by his adversaries. Infact, none of the ingredients of Sections 25-F, 25-G and 25-H of the Act has been pleaded by the petitioner. The evidence led by the petitioner (PW1) being beyond his pleadings cannot be read. In view of the contents of the statement of claim/demand, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services have been wrongly and illegally terminated by his opponents.

29. No reference has been received from the appropriate Govt. regarding providing the fictional breaks to the petitioner by the respondents. The said controversy, if any, between the parties being beyond the terms of the reference cannot be looked into by this Court.

30. Otherwise too, from the admissions made by the petitioner (PW1), it can be gathered that his services were engaged by the respondents in different seasonal schemes/projects depending upon the availability of the work and the budget. The evidence on the file clarifies that lastly the

petitioner worked from 5th June, 1996 to 18th July, 1996 on Crate Check Dam, Rohin under a committee headed by Shri Kanshi Ram. The latter had made a report (Ex.RW1/G) to the respondent No.2 that after 18th July, 1996, the petitioner did not report for his duties and left the service.

31. The petitioner has not placed on the record the copy of the Award, if any, passed by this Court/Tribunal in favour of Shri Thakur Singh evidencing that the facts of his case are similar to the case of Shri Thakur Singh whose services have already been regularized by the respondents.

32. Ex. RW1/J is the copy of an Award dated 27.10.1999 pronounced by the Id. Presiding Judge, Labour Court, Shimla in Reference No.132 of 1996 titled as Shri Rattan Singh and 4 others versus Sub Divisional Soil Conservation Officer, Ghumarwin and another. Its perusal discloses that almost on similar facts the retrenchment/termination from services was challenged by Shri Rattan Singh and his associates. The claim petition was dismissed by the Court/Tribunal by holding that the benefit of Section 25-F of the Act cannot be extended to seasonal employees, even if, they have put in 240 days of service. The Award dated 27.10.1999 has already attained the finality.

33. Taking into account the above noted facts, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The alleged termination of the services of the petitioner by the respondents is neither illegal nor unjustified. The petitioner/claimant is not entitled to any relief. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim.

34. These issues are decided against the petitioner and in favour of the respondents.

ISSUE NO.3

35. Not pressed

RELIEF (ISSUE NO.4)

36. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/-.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

39. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 124/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Labh Singh s/o Shri Dasu Ram, r/o Village Bal, P.O. Drubbal, Tehsil Joginder Nagar,
District Mandi, H.P. *.Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Labh Singh S/O Shri Dasu Ram, Village Bal, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1999 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.7.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.7.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else

despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of June, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to

the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1999 to August, 2007 is illegal and unjustified as alleged? . . . OPR.
2. Whether the petition is not maintainable in the present form? . . . OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . . OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . . OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Labh Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway

Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.6.1999.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 49 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 91/2010

Date of Institution : 23.04.2010

Date of Decision : 11.03.2013

Shri Mahesh Kumar s/o Shri Bhagat Ram, r/o Village Lower Seri, P.O. & Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

Proprietor, M/S Speed Automobiles, Maruti Authorized Service Station, Near Gurdwara Sahib, Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Kamal Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Mahesh Kumar S/O Shri Bhagat Ram by the Proprietor, M/S Speed Automobiles, Maruti Authorized Service Station, Near Gurdwara Sahib, Joginder Nagar, District Mandi, H.P. w.e.f. 16-04-08 without serving him charge sheet, without holding enquiry and without complying with the provisions of The Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that the respondent/Service Station was started w.e.f. 04.10.2005. His services were engaged as a Works Inspector by the respondent on 05.2.2007. At the time of his (petitioner's) engagement, no appointment order/letter was issued by the respondent. He worked continuously up-to 28.2.2008. On 1st March, 2008, he was not allowed to perform his duties by the respondent. On that day, his services were terminated by the Manager of the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor he was charge-sheeted. Even the retrenchment compensation was not paid to him. He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date/month of his termination i.e. 01.3.2008. During the period of his employment, his work and conduct was satisfactory. No complaint was made against him by the management and the customers of the respondent. At the time of the termination of his services, the persons junior to him were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. S/Sh. Rattan Chand (Senior Technician), Ravinder Kumar (Store Keeper), Sanjay Kumar (Junior Technician), Lokesh Sharma (Helper), Dev Raj (Helper), Vinod Kumar (Washer Man), Jai Singh (Helper), Davinder Kumar (Dainter), Dharam Pal (Painter), Partap Singh, Mahinder Singh (Helpers) Aashish Sharma (In-charge) and Man Chand Katoch (Manager) were working with him (petitioner) in the Service Station. He was paid the monthly salary @ Rs.1500/- for the period 05.2.2007 to 28.2.2008. The same is/was less than the wages prescribed under the

Minimum Wages Act, 1948. He is entitled to the difference of wages as fixed by the State Government from time to time under the above noted Act. The establishment of the respondent falls in the notified area near the Gurdwara at Joginder Nagar. Shops and Commercial Establishments Act applies to the respondent. The latter did not extend the benefit of earned leave, casual leave, medical leave and the national festival holidays to him (petitioner) during the period of his engagement from 05.2.2007 to 28.2.2008. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “i) The Hon’ble Court may kindly be set aside the unlawful termination order dated 01 03 2008 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- ii) The Hon’ble Court kindly be determine the wages of applicant in the category of works inspector/supervisor under the Minimum Wages Act, and directed to respondent to pay the difference of wages to the applicant for the aforesaid period under the Minimum Wages Act, 1948 with interest @ 12% per year”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner was not a workman as defined in the Act. This Court has no jurisdiction to entertain and decide the matter. The claim petition has not been instituted in the prescribed form. The petitioner is estopped from filing the petition by his act, conduct and acquiescence. He (respondent) does not fall within the purview of the Act. The claim petition has not been properly verified. The same is bad for non joinder of the necessary parties. On merits, it has been denied that the services of the petitioner were engaged as a Works Inspector on 05.2.2007. Actually, the petitioner was kept on the Service Station for probation of six months per verbal appointment order w.e.f. 01.1.2008. As per the appointment order, it was mandatory for the petitioner to work satisfactorily. No valid relationship of master and servant existed between the parties. The services of the petitioner were never disengaged as alleged. He did not work for 240 days as claimed. Only honorarium and not the wages were paid to the petitioner. During the period of employment, the work and conduct of the petitioner was unsatisfactory. On 1st March, 2008, the petitioner left the Service Station of his own. On 16.4.2008, when he reported for work after his absence w.e.f. 01.3.2008, he was not allowed to work. The petitioner did not apply for leave of any kind. He remained willfully absent from duty. Though the petitioner was not a workman yet an employee is bound to maintain the discipline. The services of the petitioner were terminated by a verbal order as his work was unsatisfactory and due to the indiscipline. In the month of January, 2008, the petitioner, Shri Dev Raj, Shri Rakesh Kumar and four other persons were issued the identity cards by him (respondent). The petitioner and some other persons got effected a few changes in the identity card from Shivam Colour Lab, Joginder Nagar without his (respondent's) authority and approval. The petitioner is guilty of misconduct. It (respondent) lost the confidence in the petitioner and told him that his services are no more required. The petitioner was not a regular appointee. He was only a probationer. No person junior to the petitioner has been retained in service or engaged/re-engaged. The identity card was tampered by the petitioner with a malafide intention to show that he is regular worker. No provision of the Act has been flouted. Moreover, the petitioner had taken Rs.15,000/- from him (respondent) as loan in order to fulfill his domestic obligations. The loan was termed as advance amount. The petitioner promised and undertook to return the advance money in monthly installments of

Rs.2000/- each, which he failed to do. A receipt regarding the loan amount was also executed by the petitioner. He (respondent) is entitled to recover the loan/advance amount from his opponent. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be rejected and the petitioner directed to refund Rs.15000/- to him.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that his services were engaged w.e.f. 01.1.2008 on probation for a period of six months. He never abandoned the job. Demand notice dated 04.4.2008 was served upon the respondent by him after the termination of his services. No identity card was issued by the respondent in the month of January, 2008. He did not get effected any change in the identity card as alleged. His work and conduct was upto the mark. He has not taken the loan of Rs.15,000/- from his adversary. No receipt was ever executed.

5. Vide order dated 24.3.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 16.4.2008 is violative of the provision of Sections 25-F & 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . .OPR.
3. Whether this Tribunal has no jurisdiction to entertain the present lis as alleged. If so, to what effect? . . .OPR.
4. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner, Shri Mahesh Kumar stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were initially engaged for six months on probation w.e.f. 01.1.2008. He also denied that on 01.3.2008, he voluntarily left the service and absented from his duties. Further, he denied that he reported for duty on 16.4.2008 and the respondent refused to reemploy him due to his willful absence from work. He denied that he and Shri Rattan Chand etc. got the changes made in the identity cards issued by the respondent from Shivam Colour Lab, Joginder Nagar. He refuted that he was paid only the honorarium by the respondent and he has instituted a phoney petition.

10. Conversely, Shri Sanjay Sharma, owner of the respondent/concern testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he denied that the services of the petitioner were disengaged in a wrongful manner on 01.3.2008. When the petitioner abandoned the job, no notice was given to him asking him to resume the work. Even no departmental proceedings were initiated against the petitioner. His Store Clerk used to mark the attendance of the probationers daily in a copy. That copy has not been produced by him. Self stated, in the month of September, 2009, the building of the Service Station gave way due to the floods. The record and vehicles were damaged on that day. He denied that he is telling the lies.

11. Shri Sohan Singh (RW2) is running a lab in the name and style of Shivam Colour Lab, Main Bazar, Joginder Nagar. He supported the version of the respondent regarding making the changes/tampering with the identity cards. Ex. RW2/A is the affidavit filed by him as per Order 18 Rule 4 CPC. In the cross-examination, he stated that the order regarding the preparation/printing of the identity cards was issued by the respondent. He denied that the identity cards were prepared in the year 2007. Volunteered, the same saw the light of the day in the month of January, 2008.

12. RW3 is Shri Lakesh Kumar. In his affidavit Ex. RW3/A submitted under Order 18 Rule 4 CPC, he stated that in the month of January, 2008, the management had issued eight identity cards to the employees of the concern. An identity card was also issued in his (RW3's) favour since he was working with the respondent. After the issuance of the identity cards, within a period of one week, he (RW3) alongwith the petitioner and two other workmen, visited Shivam Colour Lab, Joginder Nagar. They got the changes effected in the identity cards without the permission and the authority of the management. He (RW3) was misguided by the petitioner and Shri Rattan Lal because of which he got the changes in the identity card made. In the cross-examination, he denied that even now he is working with the respondent. When he (RW3) left the service, the petitioner was serving the respondent.

13. Ex. PW1/B is the copy of the identity card allegedly issued by the respondent in the name of the petitioner. The date of issue has been mentioned as 05.2.2007.

14. Ex. R1 is the copy of the demand notice served upon the respondent by the petitioner under Section 2-A of the Act. Reply Ex. R2 was given to it by the respondent.

15. The version of the petitioner is that his services were engaged by the respondent as a Works Inspector w.e.f. 05.2.2007. The said fact has been denied by the latter. Instead, the respondent has pleaded that the petitioner was appointed as a probationer for six months w.e.f. 01.1.2008.

16. The petitioner has not examined any co-worker or produced any document to show that his services were initially engaged by the respondent on 05.2.2007 as claimed. The bald statement made by the petitioner in this regard cannot be taken as a gospel truth. True it is that in the identity card Ex. PW1/B, the date of issue has been recorded as 05.2.2007. From the statements made by RWs 1 to 3, it can be gathered that the identity cards were got prepared and issued by the respondent only in the month of January, 2008. The petitioner and others got effected some changes in the identity cards without the permission and consent of the respondent. The depositions in this regard made by RWs 1 to 3 go un-rebutted and unchallenged on the record. It is trite that if a fact remains un-rebutted during the cross-examination, the same is to be taken as admitted by the other side.

17. There is no cogent and convincing evidence on the record to show that the petitioner served the respondent for 240 days in a block of 12 calendar months anterior to the date of his alleged termination. The provisions of Section 25-F of the Act are not attracted in this case.

18. The petitioner has not disclosed the name of any person junior to him who was retained in service by the respondent at the time of the retrenchment of his (petitioner's) services. For this reason, it cannot be said that the respondent has contravened the provisions of Section 25 G of the Act.

19. Otherwise too, Section 10 (4) of the Act mandates that this Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the payment of the less wages to the petitioner or the non extension of the benefit of the earned leave etc. to him. As per the reference, the services of the petitioner were terminated by a verbal order w.e.f. 16.4.2008. The order of termination dated 16.4.2008 has not been impugned by the petitioner on any ground. He has questioned the legality and validity of the termination order dated 01.3.2008 in the statement of claim/demand and the rejoinder. No retrenchment order was passed on that day i.e. 01.3.2008 by the respondent. Since the retrenchment order dated 16.4.2008 (as per the reference) has not been challenged by the petitioner on any ground by no stretch of imagination, it can be concluded that the said order is bad in the eyes of law.

20. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable. The petitioner is not entitled to any relief. No provision of the Act has been flouted by the respondent. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

21. These issues are decided against the petitioner and in favour of the respondent.

ISSUE NO.3

22. Not pressed.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 118/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Mani Ram s/o Shri Garib Dass, r/o Village and P.O. Drahal, Tehsil Joginder Nagar,
District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
. .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Mani Ram S/O Shri Garib Dass, R/O Village and P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1999 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.3.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.3.1999 to 31.8.2007,

he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of May, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1999 to August, 2007 is illegal and unjustified as alleged? . .OPR.
2. Whether the petition is not maintainable in the present form? . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Mani Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar

(B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon). 12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the dailywaged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.4.1999.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of

the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 41 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.
Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 271/2012

Date of Institution : 06.07.2012

Date of Decision : 01.03.2013

Shri Meen Chand s/o Shri Madan Lal, r/o Village Anubal, P.O. Behali, Sub Tehsil Nihri,
Distt. Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Sunder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Meen Chand S/O Sh. Madan Lal, Village Anubal, P.O. Behali, Sub Tehsil Nihri, Distt. Mandi, H.P. by The Divisional Forest Officer, Sunder Nagar, Distt. Mandi, from time to time during 2008 to June, 2010 and finally during July, 2010 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, seniority, past service benefits & compensation the above aggrieved workman is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a beldar by the respondent on 01.11.1999. He worked as such in Forest Range, Kangoo up-to 31.7.2010. On that day i.e. 31.7.2010, in the evening, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. During the period of his employment, the respondent used to give him the fictional breaks so that he does not complete 240 days of work in a year. The same amounts to unfair labour practice. In the year 2011, his services were re-engaged for a few days by the respondent. After that, in the year 2012, he was once again re-employed by the respondent. However, he was not allowed to complete 240 days of service. The names of 386 workers are there in the seniority list dated 31.3.2003 issued by the respondent. His (petitioner's) name finds mention at serial No.303 of the said list. 83 labourers junior to him are working with the respondent/department. He was not re-employed. He has been discriminated. His seniority has been ignored by the respondent. The latter has failed to abide by the principle of 'last come first go'. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, he (petitioner) prays that the termination of his services ordered by the respondent from time to time and final termination ordered in the month of July, 2010 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the claimant/petitioner. The reference regarding retrenchment w.e.f. the month of July, 2010 and the claim petition are premature. They have also become infructuous since the petitioner is continuously on his (respondent's) rolls. The services of the petitioner were never terminated as alleged. His mandays chart is annexure R-1. On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar on 01.11.1999. Actually, the petitioner was appointed as a daily waged labourer for seasonal work in the month of April, 2000. He used to work intermittently as per his sweet will and convenience. As and when the petitioner reported for duty, his services were engaged subject to the availability of the work and the funds. No artificial/fictional breaks were ever given to the petitioner. His services were not finally disengaged in the month of July, 2010. Since the petitioner attended to his duties as per his convenience, he could not complete 240 days of work in any calendar year of his employment. It stands admitted that the name of the petitioner figures at serial No.303 of the seniority list. He had worked for the whole month of August, 2010. Therefore, the question of the termination of his services in the month of July, 2010 does not arise. The petitioner never approached him (respondent) for re engagement. He worked on various seasonal forestry works intermittently for a few days in a particular year and used to leave the job voluntarily. The principle of 'first come last go' was strictly adhered to. No provision of the Act has been infringed. Since the petitioner is working with him (respondent), there is no question of his not being gainfully employed. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petition is meritless. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent.

5. Per order dated 15.11.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent from time to time during the year 2008 to June, 2010 and finally during the month of July, 2010 is illegal and unjustified as alleged? . . .OPP.
2. Whether the claim petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? . . .OPR.
4. Whether the claim petition is premature as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Partly Yes, Partly No

Issue No.2 : Partly Yes, Partly No

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. Shri Meen Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were engaged for seasonal forestry works depending upon the availability of the work and the budget. He admitted that he is serving the respondent/department even after the month of July, 2010. Self stated, his services were disengaged in the month of November, 2010. He denied that he could not complete 240 days of work as he used to remain absent and was employed for seasonal forestry works only. He also denied that he has instituted a phoney petition.

10. Conversely, Shri Ajit Thakur, Divisional Forest Officer, Sunder Nagar (respondent), testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that the services of the petitioner were initially engaged on 01.4.2000. He denied that the fictional breaks were provided to the petitioner time and again. He admitted that work for 240 days in any particular year was not provided to the petitioner by the department. He also admitted that after the petitioner left the job, no notice was given to him.

11. Exts. PW1/B and RW1/B are the mandays charts relating to the petitioner.

12. Ex. PW1/C is the copy of the seniority list of daily wagers of Suket Forest Division, Sunder Nagar, as it stood on 31.3.2003. In all the names of 386 workers are there in this list. The name of the petitioner finds mention at serial No.303 of the list.

13. From the pleadings of the parties and the evidence on record, it can be gathered that the services of the petitioner were engaged as a daily waged beldar by the respondent on 1st April, 2000. The version of the petitioner is that he worked as such continuously up-to 31.7.2010. On that day in the evening, his services were terminated by the respondent by an oral order wrongly and illegally. The said fact has been denied by the respondent.

14. Ex. PW1/B is the mandays chart relating to the petitioner which has been produced by him. It corresponds to Ex. RW1/B. It is not the case of the petitioner that the mandays chart is incorrect. From the mandays chart, it becomes clear that in the month of August, 2010, the petitioner had served the respondent/department for 30 days. Thereafter, he served the respondent for the entire months of December, 2010 as well as January, to March, 2011. As the petitioner worked with the respondent/department for the whole month of August, 2010, the question of the termination of his services in the evening of 31.7.2010 by the respondent does not arise. Since no retrenchment order was passed by the respondent in the month of July, 2010 by no stretch of imagination, it can be said that the final impugned termination order is wrong and illegal. The claim petition to this extent is not maintainable.

15. The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner were engaged for seasonal forestry works. Mandays charts Ex. PW1/B and RW1/B go to show that in the years 2008 and 2010, the petitioner worked with the

respondent/department for 222 and 237 days, respectively. A person working for almost 240 days in a year cannot be termed as a seasonal worker.

16. The respondent has maintained that no artificial/fictional breaks were ever given to the petitioner during the course of his employment. The petitioner could not complete 240 days of work in any calendar year of his engagement as he used to leave the job willingly as well as work according to his sweet will and convenience. It has already been held by me that the petitioner was not a seasonal worker whose services were engaged by the respondent subject to the availability of the work and the funds. If the petitioner used to remain absent from his duties time and again, then why no notice was given to him by the respondent calling upon him to resume the work or the disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The respondent (RW1) in his cross-examination admitted that 240 days of work in a year was never provided to the petitioner by the department. This indicates that fictional breaks were being given to the petitioner by the respondent from time to time which amounts to unfair labour practice as per Schedule Fifth appended to the Act. The period of artificial breaks is required to be counted for the purpose of continuous service. The claim petition/reference in this regard lies before this Court.

17. These issues are decided accordingly.

ISSUE NO.3

18. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in *Liaq Ram Versus State of H.P. & others*, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

20. While testifying in the Court as PW1, the petitioner has given his age as 36 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

21. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

22. Not pressed.

RELIEF (ISSUE NO.5)

23. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of his services in the month of July, 2010 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from the year 2008 to June, 2010 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service except back wages. The respondent is also directed not to provide the fictional breaks to the petitioner in future. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 110/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Mohinder Singh s/o Shri Bishan Dass, r/o Village and P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Mohinder Singh S/O Shri Bishan Dass, Village and P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P. by the

Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2001 to Year, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.12.2001 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.12.2001 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of December, 2001. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his

(respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2001 to August, 2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Mohinder Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2001 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.12.2001.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 1/2010

Date of Institution : 16.01.2010

Date of Decision : 12.03.2013

Shri Pawan Kumar s/o Shri Jagan Nath, r/o Village Shishamati Kullu, Distt. Kullu, H.P.

. .Petitioner.

Versus

1. The Superintending Engineer, IPH Circle, Kullu, District Kullu, H.P.

2. The Executive Engineer, IPH Division Keylong, District Lahaul & Spiti, H.P.

3. The Executive Engineer, IPH Division No.1, Kullu, District Kullu, H.P.

. .Respondent(s).

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

1. “Whether the termination of the services of Sh. Pawan Kumar S/O Jagan Nath by the Executive Engineer, IPH Division Lahoul at Keylong w.e.f. 01.3.2007 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief of service benefits including seniority and compensation the aggrieved workman is entitled to?”
2. “Whether giving fictional breaks in service of Sh. Pawan S/O Jagan Nath workman time and again ignoring the orders/instructions issued by the H.P. Govt. vide letter no. IPH(A)2(B)1 2/2003-Part dated 27.3.2006 is legal and justified? If not, what amount of compensation and consequential service benefits Sh. Pawan Kumar workman is entitled to?”

2. The facts of the case (as set out in the statement of claim/demand) read thus:—

“1. That the services of applicant was engaged on muster roll as daily waged store clerk by the respondent no 2 w.e.f. June, 2005 under the muster roll no 57 and in the month of July and August, 2005 the muster roll bearing no 100 and 129 issued in the favour of applicant in the capacity of works inspector but his services has been utilized by the respondent no 2 as store clerk for the said period against the sanction post which was lying vacant due to transfer of Sh. Lekh Raj Store Clerk since July, 2005.

2. That during the month of September, 2005 no muster roll was issued but the services of applicant has been taken as store clerk as per the requirement of Section Engineer/Store Incharge Gondhla which is in the evidence of record resulting in non payment of applicant for the said period i.e. September, 2005.

3. That it is specifically stated here that fictional breaks were given to applicant for the period in September, 2005 by the respondent no 2 by deliberately, knowingly, to not letting to complete 240 days in continuous service for the purpose of section 25-B of the Industrial Disputes Act, 1947. Before given the fictional breaks to the applicant in the month of September, 2005 no prior notice has been given to him regarding his fictional breaks and the respondent no 2 ignoring mandatory provisions of Industrial Disputes Act, 1947 as well as the government standing instructions issued by the Principle Secretary IPH to the Government of Himachal Pradesh Shimla vide letter no IPH (A)2(B)1-2/2003-Part dated 27-03-2006 respectively.

4. That it is again specifically stated here that in the month of October and November, 2005 the respondent no 2 again issued the muster rolls to the applicant in the capacity of store keeper against the sanctioned/vacant post bearing muster roll no 187 & 207 and in the month of December, 2005 to May, 2006 the services of applicant have been dispensed vide verbal order by the respondent no 2 as given him fictional breaks for the said period without any written order. It is categorically stated here due to winter season in the keylong the applicant was unable to come back to Kullu due to closure of vehicular traffic on Rohtang Pass and the applicant was compelled to stay there being harassed deliberately, knowingly by the respondent no 2 resulting in financial hardship and mental agony. Since there are various jobs relating to store to be carried out on monthly/quarterly basis for which the services of store clerk/store keeper are essentially/bonafidely required.

5. That during the month of June to August, 2006 the applicant again issued muster roll as Assistant Store clerk bearing muster roll no 51, 101 & 132 respectively and in the month of September, 2006 the services of applicant has again been dispensed as given him fictional breaks for 30 days, whereas the services were taken as per recognition made by immediate superior i.e. Junior Engineer, Incharge of IPH Store Gondhla and no wages in this content were given as yet. In this regard documents i.e. Challans, indent on account of materials etc are very much available with the department. It is submitted the services of applicant has been engaged by the respondent no 2 as Assistant Store Clerk in the muster roll 168 and 2008 in the month of October and November, 2006.

6. That it is categorically mentioned here during the month of December, 2006 the applicant have made request to the worthy Superintending Engineer, IPH Circle Kullu regarding temporarily adjustment/transferred to respondent no 3 IPH Division No1 Kullu due to closure of Rohtang Pass. On the request of applicant and compelling circumstance the worthy Superintending Engineer, IPH Circle Kullu has accept the request of applicant and issued transferred order temporarily order to the IPH Division No Kullu as respondent no 3 vide letter no SE-IPHK-EA-III D.W/06-12354-56 dated 28-12-2006 with remarks till opening of Rohtang Pass in public interest with copy of Executive Engineer, IPH Division No 1 Kullu as respondent no 3 as well as Executive Engineer IPH Division Lahaul at Keylong as respondent no 2.

7. That on the basis of this order the respondent no 3 complying the order of respondent no 1 and issued muster roll as store clerk to the applicant for the period from January, 2007 and February, 2007 accordingly. It has been came to know from the reliable sources that in between the Executive Engineer/Assistant Engineer, IPH Division/Sub Division Lahaul at Keylong have telephonically intimated to the Executive Engineer/Assistant Engineer Kullu with the remarks that the official was employed by giving breaks for every 2 months. On the basis of telephone conversations the Assistant Engineer, IPH Sub Division No 1 Kullu without his applying the mind has proposed to discontinue the muster roll of applicant w.e.f. 01-03- 2007 vide his letter no IPH KSD-1/06-7079-80 dated 28-02-2007 by disobeying the order of the worthy Superintending Engineer, IPH Circle Kullu deliberately with malafide intention to not letting to complete 240 days as required under section 25-B of the Industrial Disputes Act, 1947 for the purpose of continuous service.

8. That the services of applicant have been not allowed by the Assistant Engineer w.e.f. March, 2007 as such the services of applicant have been finally terminated by the department without prior permission to the worthy Superintending Engineer as well as the Executive Engineer.

9. That the action of Assistant Engineer Sub Division Kullu is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act, 1947 where as the services of applicant have been appointed by the respondent no 2 as per the direction of respondent no 1 whereas the applicant was fall in the category of class III employee and in the class III employees the Superintending Engineer has been declared appointing authority and the same has been violated against the recruitment and promotion rules as well as natural justice, whereas non appointing authority can not be dispensed, terminated, dismissal or retrenched the services of any workman or employees.

10. That the work and conduct of the applicant was fully satisfactory up to the mark and during his services in the department he has never given any complaint to his superior. But before terminating his services no charge-sheet, enquiry had been conducted against him in his alleged misconduct. So the termination of the services of the applicant does not arise at all.

11. That it is specifically stated here that the applicant was never willfully absent from his duty from June, 2005 to February, 2007 but in between the services of applicant has been engaged and disengaged by the respondents as given him fictional breaks from his services from time to time as mentioned above so it is not a fault of workman to not complete 240 days in continuous service whereas the applicant is duly covered under section 25-B read with section 25-F of the Industrial Disputes Act, 1947 whereas the muster roll have not been issued for the aforesaid mentioned period is the fault of respondent.

12. That it is specifically stated here the number of complaint have been received by the Principle Secretary IPH regarding fictional breaks to given the daily waged workmen in various divisions in Himachal Pradesh and in this regard Under Secretary (IPH) to the Government of Himachal has issued the letter to all the Executive Engineer, IPH to the Government of Himachal Pradesh dated 27-03-2006 regarding fictional breaks and thereafter the services of daily wager have been engaged in continuity of service and in the month of June, 2006 to onwards no daily wager workmen have been given the fictional breaks by all the division of IPH as like respondent no 2 and 3.

13. That the act of the respondent to given the fictional breaks in the services of applicant in between June, 2005 to February, 2007 to not letting to complete 240 days and the same has been covered in the fifth schedule clause 10 to deprive him for continuous service and the same has been declared as unfair labour practice and the same has been violated under section 25-T, 25-U read with Section 29 of the Industrial Disputes Act, 1947.

14. That it is categorically stated here the applicant was unemployed during his break period in between June, 2005 to February, 2007 and not gainfully employed for the said period and also unemployed and not gainfully employed any where from the date of his illegal unlawful termination w.e.f. 01-03-2007 to onwards.

15. Reliefs:

It is therefore prayed in view of the aforesaid submissions made here in above the Hon'ble Court may kindly be granted the following relief in the favour of applicant.

- i. The Hon'ble Court may kindly be set aside the illegal fictional breaks period in between June, 2005 to February, 2007 and directed to respondent to condone the said period in his continuity of services and also directed to pay the wages of break period to applicant.
- ii. The Hon'ble Court again set aside the unlawful illegal termination order passed by the Assistant w.e.f. 01-03-2007 and directed to respondent to reinstate the services of applicant with full back wages, seniority, in continuity of service with all consequential service benefits throughout in the interest of justice and justice be done".

3. On notice, the respondents appeared. They submitted joint reply controverting the averments made in the petition/statement of claim. The same is reproduced below verbatim for ready reference:—

“Preliminary Submissions:

1. That the legal and fundamental right of the applicant has never been infringed in any manner, as such, the present quotation is not maintainable.

2. That the claim of the petitioner is bad on account of delay and laches on his part.

3. That in fact Gondhla Section (L&S) is snow bound area and it remains covered with snow for about five to six months in a year during the snow period. The M/Roll are issued to labour seasonally. In the present case the petitioner has worked w.e.f. 6/05 to 11/05 except 9/05 for 135 days and 6/06 to 11/06 except 9/06 for 131 days and thereafter, his services have been dispensed with. The details of man days chart is annexed as Annexure-R-I (Original signed by the Executive Engineer). He made a false application to the Superintending Engineer, PH Circle, Kullu on 17-12-2006 as per Annexure-R-II that due to his ill health, he may be transferred to Kullu. The Superintending Engineer, IPH Circle, Kullu has temporarily transferred the petitioner in IPH Division No.I, Kullu till opening of Rohtang Pass vide order dated 28-12-2006 Copy annexed as Annexure-R-III. He worked in IPH Sub Division No. I, Kullu for full months during January and February 2007 as per man days chart annexed as R-IV and thereafter his services have been dispensed with. Since the petitioner was not on roll in IPH Division, Keylong during 12/2006, hence he managed his transfer by the Suppressing material facts. It is well settled law by the Supreme Court (1995) 5 SCC 653 that cessation of seasonal work would not amount to retrenchment.

4. That the petitioner has misrepresented himself and has approached Hon'ble Court by concealing material facts. Reply on Merits:

1. That the contents of this para are wrong hence denied. The petitioner was initially engaged as casual labour in August 2005 M/Roll No.57, @ Rs.87.50/- per day. Thereafter vide Muster Roll No. 100 his category was changed that of work inspector @ Rs.103.10 per day as per availability of work. He was never engaged as Store Clerk against any sanction post. It is submitted that during 8/05 and 9/05 he was engaged as Work Inspector on restoration of various FIS in Gondhla Section. It is incorrect to say that his services were taken as store clerk against sanction post. He was deputed to work as store clerk during winter season when the field work was not possible to accommodate him. The rate of wages of Work Inspector and store keeper/Assistant Store Clerk were the same detailed man days chart as well as copy of muster roll no.57 are being attached herewith as Annexure R-I to R-III i.e. 103.10 per day.

2. That the contents of this para are wrong, hence denied. It is submitted that since no muster roll was issued to the applicant during September 2005 and as such there is no question of utilizing his service as Store Clerk. In fact there was no work/justification to engage a Work Inspector during 9/05 when the working season comes to end. Due to extreme cold and heavy snow fall the field work is impossible in the valley till 15 November to 15 May every year. As such the M/Roll of Work Inspector was discontinued. However the petitioner was accommodated as a store clerk during 10-2005. He was never engaged as Store Clerk during 9/05. Whenever the department engages any one, his presence is marked daily on the specific muster roll.

3. That the contents of this para are wrong, hence denied. It is submitted that there was no work/justification to engage a Work Inspector during 9/05 when the working season comes to end as such M/Roll of Work Inspector was discontinued. Since the applicant was a casual workman and not a continuous workman, hence no notice under law was required. He was never issued M/Roll fictionally, hence there is no question of volition of Govt. letter dated 27-3-2006. However the petitioner was reengaged with the start of the working season in 6-2006.

4. That the contents of this para to the extent that the applicant was re-engaged as Store Clerk during the month 10/05 and 11/05 are admitted remaining contents are wrong, hence denied. The muster roll of store clerk was issued, just to accommodate the petitioner during the period when no field work was available. It is submitted that applicant being a casual workman not appointed as per rules, hence he has not vested right for continuity. It is further submitted that keeping in view the extreme weather conditions the respondent are not in position to utilize the

services of daily paid work man throughout the whole of the year. It is further submitted that no fictional breaks were ever given to the petitioner. 5. That the contents of this Para are admitted to the extent that the applicant was re-engaged as Assistant Store Clerk during 06/2006 to 08/2006 against muster roll 51, 101 and 132 respectively. But while engaging him, he was informed that he was engaged only for one or two month to meet with the requirement of receiving supply of material at store as there was no sanction post of clerk in Divisional Store Gondhla. It is specifically denied that service of the applicant was utilized in 09/2006 without muster roll. It is submitted that no service of the applicant for issue of challans, indents was taken by the department during the absence period as per record, however during 10/06 and 11/06 as per the availability of work. He was engaged as Assistant Store Clerk against M/Roll No 68 and 208 for which the wages has already been paid to the petitioner.

6. That the contents of this para are admitted, but the applicant managed his transfer by concealing material facts as firstly that he was not in roll during 12/06 in Keylong Division, copy of the request for transfer as well as order dated 28-12-2006 are being attached herewith as an R IV & R V.

7. That the contents of this para to the extent that the petitioner was engaged as Store Clerk during the month of 1/07 and 2/07 under IPH Division No.1 Kullu are admitted and remaining contents are wrong and hence denied. The Mandays chart of Kullu division attached herewith as Annexure R VI. It is submitted that in fact the applicant has managed his transfer by concealing material fact as his service already stood dispensed with by the Executive Engineer IPH Division Keylong on 27.11.2006, due to the closer of working season, which fact he did not disclose to the Superintending Engineer hence, the Executive Engineer IPH Division No.1 Kullu did not find it proper to continue him and hence disengaged him w.e.f. March 2007.

8. That the contents of this para to the extent of dis-engagement w.e.f. 2007 are admitted detailed reply had already been given in para 6 & 7 above.

9. That the contents of this para are wrong, hence denied. It is submitted that the applicant being a casual workman was not holding any civil post, further, keeping view the act of the petitioner is not entitled for any of the protections provided under the Industrial Dispute Act, 1947.

10. That the contents of this para are wrong. Hence denied. It is submitted that since the petitioner was not holder of civil post as per rules and as such there is no question for any charge sheet and inquiry in the present case.

11. That the contents of this para are wrong, hence denied. It is submitted that the area being snow bound for five to six month and only M/Roll are issued seasonally, but in the present case the applicant has not completed 180 days in the calendar months nor in the preceding 12 calendar months when he has been disengaged and as such provision of section 25F are not applicable in the present case.

12. That the contents of this para are wrong and hence denied. No fictional breaks were ever given to the petitioner. The work was provided to him as availability and funds.

13. That the contents of this para are wrong, hence denied in view of above submission.

14. That the contents of this para are wrong and hence denied. The petitioner is gainfully employed for his livelihood. In these circumstances, the respondents pray that the claim petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been disputed that he was appointed as a casual labourer. At the time of his engagement, no terms and conditions were settled to the effect that his appointment is for a specific period. The mandays chart(s) produced by the respondents is/are baseless. He (petitioner) being a Clerk falls in the category of Class-III employee. The Executive Engineer and the Assistant Engineer are not empowered to terminate his services. He completed 180 days of work in a block of 12 calendar months preceding the date/month of his retrenchment.

5. Per order dated 13.1.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 01.3.2007 is violative of the provisions of Section 25-F and 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the act of the respondent giving fictional breaks by the respondent is illegal and unjustified as alleged. If so, to what effect the petitioner is entitled to? . . .OPP.
3. Whether the reference is not maintainable as alleged. If so, to what effect thereto? . . .OPR.
4. Relief.

6. At this stage I will like to highlight that as per the notification issued by the appropriate Govt. the reference has been received against two persons only viz. No.1 The Executive Engineer, IPH Division, Lahaul at Keylong, Distt. Lahaul & Spiti, H.P. and No.2 The Assistant Engineer, IPH Division Keylong, Distt. Lahaul Spiti, H.P. It is the basic law that a party cannot be added or substituted by the reference Court in place of the parties against whom the reference is made by the appropriate Government. Therefore, I will confine my discussion in the subsequent part of this Award only against the parties/respondents as per the reference.

7. I have heard the Id. counsel/AR for the parties and have gone through the case file. In support of his arguments, the Id. AR/counsel for the petitioner has cited the below mentioned rulings:—

- i. Chhatrapal Singh Thakur vs. Assistant Commissioner of Coalmines Provident Fund and two others, 2001 LLR 687 (M.P.).
- ii. Kukadi Irrigation Project versus Waman and another, 1994 LLR, 381 (Bombay).
- iii. Bhikku Ram s/o Shri Lalji versus The Presiding Officer, Industrial Tribunal-cum Labour Court, Rohtak, 1996 LLR 259 (P&H).
- iv. Yog Raj V/S. State of Himachal Pradesh and ors., Latest HLJ 2010 (HP) 1172
- v. Gopal Nandkishor Sharma vs. Manager, Nanavati Associates, 2007 LLR 1164 (Gujrat).

I have scanned all these authorities. With humility, I feel it apposite to mention here that they turned on their own facts and do not hold good in view of the facts and circumstances of the present lis.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 to 3

9. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

10. Shri Pawan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that his services were initially engaged as a beldar. He admitted that he was employed in I&PH Division Lahaul. In the month of July, he was appointed as a Works Inspector. He admitted that generally in the tribal area, the working season is from the month of May to October. He also admitted that mostly due to the snow fall from the month of October/November to the month of March/April, the field staff is unable to work. In the winter season, he (petitioner) used to work in the office. He admitted that the wages of the Works Inspector, Store Keeper and Assistant Store Keeper are the same. He denied that he did not work against any sanctioned post and in the winter season, his services used to be taken in the office so as to accommodate him. He also denied that due to the end of the working season, he was not provided the work by the department. He admitted that in the month of December, he had moved an application seeking transfer to Kullu from Keylong on the ground of illness. Ex. D1 (later on exhibited as Ex. RW1/G) is his application/request for transfer. He admitted that he was transferred to Kullu Division No.1 and joined the service at Kullu. He denied that after his joining at Kullu, it surfaced that he got the transfer effected by concealing the material facts since the working season in the tribal area had come to an end and his services had been disengaged by I&PH Division, Lahaul, till the start of the next working season. He refuted that he made a wrong representation regarding his ill health and was entitled for the issuance of the muster roll in Lahaul Division during the next working season. He disputed that in the month of March, 2007, his services were disengaged by I&PH Division No.1, Kullu, after becoming aware of all the facts. He admitted that he did not complete 240 days of work in I&PH Division No.1, Kullu. He denied that he got the transfer effected fraudulently because of which his services were rightly disengaged by I&PH Division No.1, Kullu. He even denied that no fictional breaks were provided to him by the respondents and he has given a phoney statement. 11. Conversely, Shri Bhim Singh Thakur, Executive Engineer, I&PH Division, Lahaul at Keylong (respondent No.1), testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that muster roll for various months was not issued in the name of the petitioner. He denied that the breaks were given to the petitioner intentionally. Self stated, no work is taken by the department during the winter season. Only the regular staff works during that season.

12. RW2 is Shri Upender Vaidya, Executive Engineer, I&PH Division No.1, Kullu. In his affidavit Ex. RW2/A submitted in accordance with Order 18, Rule 4 CPC, he supported the version of the respondents. In the cross-examination, he stated that the services of the petitioner were engaged as a daily wager by way of stop gap arrangement. As per the record, the services of the petitioner had been disengaged by Keylong Division before his transfer to Kullu.

13. Ex. RW1/B is the mandays chart relating to the petitioner issued by the Executive Engineer, I&PH Division, Lahaul at Keylong. It depicts that the petitioner worked in different capacities intermittently from June, 2005 to November, 2006.

14. Ex. RW1/C is the detail of mandays in respect of the petitioner showing the period he worked in IPH Sub Division No.1, Kullu. He served for 31 and 28 days in the months of January and February, 2007, respectively, at Kullu.

15. Ex. RW1/D (previously Mark-A) is the copy of an office order dated 28.12.2006 issued by Superintending Engineer, I&PH Circle, Kullu. It reveals that pursuant to the application dated 17.12.2006 (Ex. D1) moved by the petitioner, he was transferred to IPH Division No.1, Kullu with immediate effect temporarily till opening of the Rohtang Pass in public interest. Ex. RW2/B corresponds to Ex. RW1/D.

16. Ex. RW1/E (earlier Mark-B) is the copy of a letter dated 28.2.2007 written by the Assistant Engineer, I&PH Sub Division No.1, Kullu to the Executive Engineer, I&PH Division No.1, Kullu. In this letter, it has been mentioned that the Superintending Engineer, I&PH Circle, Kullu has issued an office order dated 28.12.2006 regarding the transfer of the petitioner, who is working as a Store Clerk on daily wages, from Keylong to Kullu temporarily till the opening of the Rohtang Pass. The Assistant Engineer, I&PH Sub Division, Keylong informed that the official (petitioner) was employed by giving breaks after every two months. The official was engaged w.e.f. 01.1.2007. Muster roll for the month of February, 2007 has also been issued in his (petitioner's) favour. The muster roll w.e.f. 01.3.2007 is proposed to be discontinued. The Assistant Engineer requested the Executive Engineer that the circle office be appraised of the facts and seniority may be obtained from the Executive Engineer, I&PH Division, Keylong. Ex. RW2/D is similar to Ex. RW1/E.

17. Mark-C is the copy of a letter dated 27th March, 2006 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. All the Executive Engineers in the State were directed to continue the daily waged services without break of the daily waged workers.

18. Ex. RW1/F (previously Mark-D) is the copy of a letter dated 09.4.2007 written by the Executive Engineer, I&PH Division Lahaul at Keylong to the Executive Engineer, I&PH Division No.1, Kullu. As per this letter Keylong people informed the authorities at Kullu that the services of the petitioner were engaged as an Assistant Store Keeper by way of stop gap arrangement. His services were disengaged w.e.f. 27.11.2006. In order to get continuous employment in the department, the petitioner played a trick by making an application to the Superintending Engineer, IPH Circle, Kullu for his transfer from Keylong (Gondhla) to Kullu. He (petitioner) managed his transfer from Gondhla to Kullu during the month of December, 2006 when he was not on the rolls of I&PH Division, Lahaul at Keylong. Ex. RW2/E corresponds to Ex. RW1/F.

19. Mark-E is the copy of a letter dated 12.3.2007 addressed to the Executive Engineer, I&PH Division Keylong by the Executive Engineer, I&PH Division No.1, Kullu. Vide this letter, Executive Engineer, I&PH Division, Keylong was requested to send the seniority list regarding the transferred employee namely Shri Pawan Kumar (petitioner) who was working as a Store Clerk on daily wages.

20. Mark-F is the copy of the letter dated 25.4.2007 written by the Executive Engineer, I&PH Division No.1, Kullu to the Superintending Engineer, I&PH Circle, Kullu. This letter contains the details regarding the working pattern of the petitioner. It has also been mentioned in the letter that the petitioner worked at Kullu temporarily from 01.1.2007 to 28.2.2007 pursuant to his transfer order dated 28.12.2006 issued by the Superintending Engineer.

21. Mark-G is the copy of a letter dated 29th August, 2005 written by the Principal Secretary (IPH) to the Government of Himachal Pradesh. As per this letter, various officers of the department were directed to file timely replies of notices issued by the Conciliation Officers in the Industrial Dispute matters.

22. Mark-H is the copy of the proforma for work charged converted into regular establishment issued by the Executive Engineer, IPH Division Keylong.

23. Ex. RW2/C is the seniority list/mandays chart pertaining to the petitioner issued by the Assistant Engineer, I&PH Sub Division No.1, Kullu. The same corresponds to Ex. RW1/C.

24. It is the admitted case of the parties that the services of the petitioner were initially engaged as a daily wager by the Executive Engineer, I&PH Division, Lahaul at Keylong in the month of June, 2005. It is not the case of the petitioner that the mandays charts Exs. RW1/B and C are incorrect. They unfold that the petitioner worked intermittently in IPH Division Lahaul at Keylong from June, 2005 to November, 2006. Admittedly, an application dated 17.12.2006 (Ex. D1) was preferred by the petitioner before the Superintending Engineer, I&PH Circle Kullu. In this application, the applicant/petitioner mentioned that he is working as a Store Clerk on daily wages in I&PH Division, Keylong from the month of June, 2005. He remains unwell in far flung hard area because of which his services should be transferred from Keylong to I&PH Division No.1, Kullu. Pursuant to the request made by the petitioner, office order dated 28.12.2006 the copy of which is Ex. RW1/D was issued by the Superintending Engineer. In accordance with this order, the petitioner was transferred from IPH Division, Keylong to IPH Division No.1, Kullu with immediate effect temporarily till opening of the Rohtang Pass in public interest. After his transfer, the petitioner worked in IPH Sub Division No.1, Kullu during the months of January and February, 2007 as is evident from the mandays chart Ex. RW1/C. After that, his services were disengaged and the muster roll w.e.f. 01.3.2007 was not issued in his favour as is clear from the letter Ex. RW1/E written by the Assistant Engineer, I&PH Sub Division No.1, Kullu.

25. In the transfer application Ex. D1, the petitioner nowhere mentioned that artificial/fictional breaks are being given to him by his employer viz. the Executive Engineer, I&PH Division, Lahaul at Keylong. From the mandays chart Ex. RW1/B and the admissions made by the petitioner (PW1) during his cross-examination, it can be gathered that the working season in the tribal area is from the month of May to October. Generally the area remains snow bound from October/November to March/April because of which no work is available for the field staff. If artificial breaks were being provided to the petitioner by his employer at Keylong then why he did not mention the said fact in his application Ex. D1? The reasons to that effect being obscure go to show that the petitioner is not speaking the truth. His version regarding providing the fictional breaks is an after thought.

26. There is not even an iota of evidence on the file to show that the services of the petitioner were disengaged by his employer viz. Executive Engineer, I&PH Division, Lahaul at Keylong at any point of time. The proposal for discontinuing the muster roll w.e.f. 1st March, 2007 was submitted by the Assistant Engineer, I&PH Sub Division No.1, Kullu per letter dated 28.2.2007, the copy of which is Ex. RW1/E.

27. The respondents have placed the copies of various muster rolls on the file. They unfold that lastly the petitioner worked in I&PH Division, Lahaul at Keylong on 26/27/11/2006. The said fact finds support from the letter dated 09.4.2007 (Ex. RW1/F) written by the Executive Engineer, I&PH Division Lahaul at Keylong to the Executive Engineer, I&PH Division No.1, Kullu. Ex. RW1/F corresponds to Ex. RW2/E. The copy of the muster roll from 01.11.2006 to 30.11.2006 issued by the Executive Engineer, I&PH Division, Lahaul at Keylong coupled with the mandays

chart Ex. RW1/B clarify that the payment for the month of November, 2006 was made to the petitioner vide voucher No.28, dated 02.12.2006. The services of the petitioner were disengaged by his employer on 26/27 November, 2006 after the onset of the winter season.

28. As already mentioned, it is the admitted case of the petitioner that he had moved an application dated 17.12.2006 (Ex. D1) before the Superintending Engineer, I&PH Circle Kullu for his transfer from Keylong to Division No.1, Kullu. Since the petitioner was not on the rolls of the department in the month of December, 2006, I am at a loss to understand as to how and on what basis he requested for the transfer from Keylong to Kullu, which was ordered by the Superintending Engineer per order dated 28.12.2006, the copy of which is Ex. RW1/D.

29. It appears to me that the petitioner managed his transfer from Keylong to Kullu fraudulently and by misrepresentation of the facts. As mentioned earlier the payment for the month of November, 2006 was received by the petitioner from the Executive Engineer, I&PH Division Lahaul at Keylong per voucher No.28, dated 02.12.2006. Therefore, it cannot be said that the petitioner was not aware of the fact that his services have already been disengaged by the Executive Engineer, I&PH Lahaul at Keylong and he is no more an employee of the department.

30. It is not the case of the petitioner that at the time of termination of his services, any person junior to him was retained in service by the respondents. It is also not his case that after his retrenchment new/fresh hands have been engaged by his adversaries. The provisions of Section 25 G and 25-H of the Act are not attracted in this case.

31. At the cost of reiteration, I will like to add that the petitioner secured his transfer and thereafter engagement in IPH Division No.1, Kullu by misrepresentation of the facts. The period for which he worked at Kullu will not come to his rescue. The mandays chart Ex. RW1/B issued by the Executive Engineer, I&PH Division, Lahaul at Keylong goes to show that the petitioner did not work for 180 days (Keylong is tribal area) in a block of 12 calendar months preceding the date of his alleged termination i.e. 01.3.2007. For this reason, the provisions of Section 25-F of the Act do not come into play in this case. Otherwise too, as already mentioned, no termination/retrenchment order has been passed against the petitioner by his employer viz. the Executive Engineer, I&PH Division Lahaul at Keylong till date. Since no termination order has been passed by the employer of the petitioner upto now, by no stretch of imagination it can be said that the alleged termination of the services of the petitioner is illegal and unjustified.

32. The evidence available on the record clarifies that the petitioner never worked against the sanctioned post. His services were engaged as a stop gap arrangement from time to time. The working pattern of the petitioner clarifies that he did not serve the department at Keylong during the winter season. He has not approached the Court with clean hands. The petitioner is guilty of committing fraud as well as suppression of the material facts from the Court.

33. In my considered opinion, the avarice of the petitioner to grab the Government job and money has forced him to institute a totally false and baseless claim as well as act fraudulently. The claim put forth by him is fallacious and not maintainable. He is not entitled to any relief.

34. These issues are decided against the petitioner and in favour of his opponents.

RELIEF (ISSUE NO.4)

35. As a sequel to my findings on the issues No.1 to 3 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. In view of the act and conduct of the petitioner, he is saddled with Rs.10,000/- as costs.

36. The reference is answered in the aforesaid terms.

37. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

38. File after due completion be consigned to the Record Room.

Announced in the open Court today this 12th day of March, 2013.

By order,
Sd/-
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 139/2007

Date of Institution : 01.11.2007

Date of Decision : 11.03.2013

Shri Piar Singh s/o Shri Tota Ram, r/o Village Jhukhan, P.O. Bardi, Tehsil Ghumarwin, District Bilaspur, H.P. . *Petitioner.*

Versus

3. The Agriculture Engineer, Bhangrotu, Tehsil Sadar, District Mandi, H.P.

4. The Sub Division Soil Conservation Officer, Ghumarwin, District Bilaspur, H.P.

. *Respondent(s).*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.K. Sharma, Adv.

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of Shri Piar Singh S/O Shri Tota Ram workman by the Agriculture Engineer, Bhangrotu, Tehsil Sadar, District Mandi, H.P. (2) The Sub Division Soil Conservation Officer, Ghumarwin, District Bilaspur, H.P. w.e.f. 19-07-1996 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:—

- “1. That the verbal termination/retrenchment of the claimant w.e.f. 18.07.96 may be held void-ab-initio and he may be held in continuous appointment of the respondents with all consequential benefits till date.
 2. That the respondent-department may be directed to prepare the seniority list of the daily wage employees in the department and thereafter to regularize the claimant in accordance with Law.
 3. That the claimant may also be awarded 2 lacs compensation from the respondents against pain, suffering and lowering down the status of claimant in the society.
 4. That record of the case may be summoned from respondents for the perusal of this Hon'ble Court.
 5. That the costs of the original application may be allowed in favour of the claimant.
 6. That any other order deemed just and proper may be passed in favour of the claimant, keeping in view the facts and circumstances of the case”.
3. On notice, the respondents appeared. They submitted joint reply controverting the averments made in the petition/statement of claim. The reply is reproduced below verbatim for ready reference:—

- “1. The soil conservation wing of department of Agriculture is mandated to formulate and execute need based schemes for the welfare of farming community whose source of livelihood is small land holdings. Soil conservation sub divisions have been opened and operationalized at focal points in all the districts of the Pradesh. In all there are 20 soil conservation sub divisions in the Pradesh.
2. To cater to the needs of farmers of district Bilaspur, soil conservation sub division at Ghumarwin is functioning and sub divisional soil conservation officer is the Incharge of the sub division. He is further supported by the section incharges i.e. junior engineer/agriculture development officers in field.
3. That soil conservation wing of the department of Agriculture formulate natural resource management schemes which interalia includes vegetative and engineering measures to control soil erosion, water harvesting schemes lime check dams, water storage tanks to harvest rain water and minor irrigation schemes where water potential exist. The main objective of formulation and execution of these schemes is to protect valuable fertile soil of farmers fields and to increase production and productivity of crops by providing life saving/assured irrigation facilities to the cultivated fields owned by the farmers on community basis priorlised.
4. That the need based schemes are and estimates are prepared so that these could be sanctioned as per availability of budget. While schemes are prioritized, it is ensured that benefit of schemes must flow to the farming community uniformly throughout the district and schemes are executed/completed in a time bound manner.
5. That the sanctioned schemes are executed in such a way that these must be completed within the sanctioned amount and execution period should not coincide with the growing period of crops or rainy season. This implies that execution of soil conservation schemes is seasonal basis and is not continuous.

6. That for execution of the soil conservation and water management schemes the following are the guiding principals.
 - (f) The schemes must be completed within the financial year and within the budget provided as per estimate of the scheme.
 - (g) After execution and completion of the scheme the same is handed over to the beneficiary farmers for maintenance and operation.
 - (h) The schemes are executed and completed by engaging local Labour both skilled and unskilled and wages are paid as per rates approved by the State Govt. from time to time.
 - (i) The account of expenditure incurred on wage component and material components is maintained in Muster rolls and material at site register respectively.
 - (j) The muster rolls and material at site registers are issued to the section Incharges after a particular scheme is sanctioned by the sub divisional soil conservation officer of the sub division.
7. That during the period from 11/88 to 5/96, 76 muster rolls were issued by the sub divisional soil conservation officer, Ghumarwin for the execution and implementation of 36 different soil and water conservation schemes in Ghumarwin block. There are three blocks in district Bilaspur, therefore, schemes executed in other blocks and labourers worked for their execution are manifold.
8. That during the implementation and execution of aforesaid 36 schemes 665 skilled and unskilled labourers worked during the period 11/88 to 5/96 and 12,851 mandays were created. Sh. Piar Singh was one of the labourers and he also worked as per availability of work under these schemes. He was also paid wages alongwith other workers and labourers. Disengagement of workers was automatic and co-terminus with the completion of particular scheme/schemes. For perusal of Hon'ble Court detail of schemes and labourers engaged for their implementation/execution is enclosed as per Annexure-R/I.
9. From Annexure-A-I it is amply clear that muster rolls were issued to engage specific number of labourers for the execution of a particular scheme and the number was proportionate to the quantum of work available under a particular scheme. It is also clear that Sh. Piar Singh worked intermittently and not continuously at his own. Therefore onus for not working regularly squarely lies on the worker and not on the department as alleged.
10. That during the year, 1996, greater emphasis was laid for conservation of natural resources and augmentation of water resources to increase production and productivity of crops. It was decided that henceforth all the schemes of soil and water conservation shall be executed in a participatory mode through Panchayati Raj Institutions and local committees of users to ensure transparency and to create durable assets. Thus the labourers both skilled and unskilled were engaged by the local committees and not by the department for the implementation and execution of all the schemes formulated by the department. Copies of notification issued by the Financial Commissioner-cum-Secretary (Panchayati Raj) to the govt. of H.P. dated 31.7.1999 and proceeding of meeting held on 5th June 1996 is enclosed as per Annexure-R/2 and Annexure-R/3 respectively.

11. That with the changed modus operandi of implementation of soil conservation schemes Sh Piar Singh worked for some time during June and July, 1996 and left work at his own. A copy of letter from Up Pradhan of Committee constituted for the execution of crate work in Village Rohin is enclosed as per Annexure-R/4. As per contents of this letter, it is clear that Sh. Piar Singh worked during June and July, 1996 and left work at his own. Therefore, the plea that he was disengaged is neither correct nor based on any documentary evidence and therefore can't be accepted as correct.
12. That while adjudicating ref. No.132 of 1996 filed by Sh. Rattan Singh and 4 others Vrs. SDSCO, Ghumarwin and Director of Agriculture, H.P. has correctly rejected the petitioned filed by the workers who also worked alongwith the present petitioner for the implementation of soil conservation scheme in Ghumarwin soil workers who also worked alongwith the present petitioner for the implementation of soil conservation scheme in Ghumarwin soil conservation section. Copy of judgement dated 27.10.1999 is enclosed as per Annexure-R/5". In these circumstances, the respondents pray that the petition in hand being not based on the material facts, arbitrary, false and meritless be dismissed.
4. No rejoinder has been preferred by the petitioner.
5. Per order dated 11.11.2010, following issues were struck by my ld. Predecessor:
 1. Whether the termination of the petitioner w.e.f. 19.7.1996 is violative of the provisions of Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
 2. Whether the petition is not maintainable as alleged. If so, to what effect? . . .OPR.
 3. Whether the petition is hit by the vice of delay and laches as alleged. If so, to what effect? . . .OPR.
 4. Relief.
 6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
 7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 and 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Piar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he stated a number of facts which do not find mention in the statement of claim/demand. He also stated that he had completed 240 days of work

in each and every calendar year of his engagement. His services have been terminated in violation of the provisions of Section 25-F and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). In the cross-examination, he admitted that he was employed by the Soil Conservation Department. The said department undertakes the work of building small check dams, preventing the soil erosion and construction of the tanks depending upon the budget. He worked in different schemes continuously. Local labour was engaged for carrying out the work. He denied that at the time of the issuance of the muster roll in his name, it was conveyed to him that his services will come to an end on a particular date and exhaustion of the budget. In the month of July, 1996, he and Shri Kuldeep Singh were working on Check Dam, Rohin. Shri Thakur Singh etc. were also working with them. Shri Thakur Singh is junior to him (PW1) and his services have been regularized. He admitted that during the month of July, 1996, the work of Check Dam, Rohin was being looked after by Shri Kanshi Ram (Up Pradhan) and others. He feigned ignorance about the fact that Shri Kanshi Ram had forwarded a report to the department that he (PW1) and Shri Kuldeep Singh have voluntarily left the job on 18.7.1996. He does not know that Shri Amar Singh etc. had instituted a similar claim petition which was dismissed by the Court. Self stated, Shri Thakur Dass had filed a case on the same facts and his services have already been regularized. He denied that the facts of the case of Shri Thakur Singh are/were different than his (PW1's) case. He refuted that neither any person junior to him has been retained in service by the respondents nor the services of the junior persons have been regularized.

10. Conversely, Shri Albel Singh Thakur, Sub Divisional Soil Conservation Officer, Ghumarwin (respondent No.2), testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him. In the cross examination, he admitted that as per the record the petitioner had worked for 240 days. He does not know that the work of the tank was started on 05.6.1996 and completed on 18.7.1996. He denied that the services of the petitioner were disengaged in a wrongful manner and he has given a phoney statement.

11. Ex. PW1/B is the copy of an office order dated 7th August, 2006 issued by the Director of Agriculture, Himachal Pradesh. It depicts that the services of many daily waged workers working in different Districts of the State of Himachal Pradesh were regularized. The services of Shri Thakur Singh s/o Shri Bakshi Ram serving in the office of the respondent No.2 were also regularized.

12. Ex. PW1/C is the copy of a letter written by the Director of Agriculture, Himachal Pradesh to Shri Piar Singh (petitioner). As per this letter, Shri Piar Singh was informed that the posts of Class-IV regular employees will be filled as per the seniority or the instructions issued by the Government of Himachal Pradesh.

13. Ex. PW1/D is the copy of an application dated 30.1.96 written by Shri Kuldeep Singh to the respondent No.2 for preparation of the seniority list. 14. Ex. PW1/E is the copy of the report made by S/Sh. Rohali Ram and Kanshi Ram, the Pradhan and Up Pradhan of the committee of village Rohin. It unfolds that the petitioner and others worked on the check dam from 05.6.1996 to 18.7.1996 under the committee.

15. Exts. PW1/F to M are the copies of the correspondence which took place between the petitioner and the authorities from time to time.

16. Ex. PW1/N is the copy of a resolution dated 30.11.1995 passed by the agriculturists of village Salon Mondal. A committee was constituted to carry out the work for the construction of a tank for soil conservation. Sh. Munshi Ram was appointed as Pradhan of the Committee.

17. Ex. PW1/O is the mandays chart relating to the petitioner.

18. Ex. RW1/B is the copy of the authority letter issued by the Divisional Engineer (Soil Cons.), Central Zone, Mandi at Bhangrotu, District Mandi. As per this letter, the respondent No.2 was authorized to attend the Court and appear as a witness.

19. Ex. RW1/C is the mandays chart which corresponds to Ex. PW1/O.

20. Ex. RW1/D is also the mandays chart pertaining to the petitioner. In it the details of the schemes have been mentioned in which the petitioner worked from time to time.

21. Ex. RW1/E is the copy of a notification dated July 31, 1996 issued by the Financial Commissioner-cum-Secretary (Panchayati Raj) to the Government of Himachal Pradesh. Vide this notification, various powers, functions and responsibilities were entrusted to the Panchayati Raj Institutions. The approved schemes for land water conservation were to be executed by the Panchayats under the technical guidance of the staff of the department.

22. Ex. RW1/F is the copy of the proceedings of the meeting held on 5th June, 1996 in the office of the respondent No.1 regarding the schemes/projects being executed by the department.

23. Ex. RW1/G is the copy of the letter written by Shri Kanshi Ram to the respondent No.2. He informed the authorities that the petitioner and Shri Kuldeep Singh worked up-to 18th July, 1996 on Check Dam, Rohin and thereafter, left the job. Ex. RW1/H is the english version of Ex. RW1/G.

24. Ex. RW1/I is the copy of the muster roll which was issued for the month of August, 1996 by Shri Kanshi Ram, Up Pradhan of the Check Dam Committee. It was highlighted in the muster roll that the petitioner and Shri Kuldeep Singh willingly left the job. They were verbally requested to resume the work, but in vain.

25. Ex. RW1/J is the copy of the Award dated 27.10.1999 pronounced by the Id. Presiding Judge, H.P. Labour Court, Shimla in Reference No.132 of 1996, titled as Shri Rattan Singh and 4 others versus Sub-Divisional Soil Conservation Officer and another.

26. Exts. R-A to R-G are the copies of the receipts and MBs evidencing that the construction work of Crate Check Dam, Rohin was got done from a committee headed by Shri Kanshi Ram.

27. Ex. R-H is the copy of the muster roll for the month of May, 1996. It reveals that the petitioner worked during the said month for the construction of the retaining wall at Bhundal.

28. In the claim petition, the petitioner has no where mentioned his date of engagement. He did not utter a single word to the effect that he had completed 240 days of work in each and every calendar year of his employment or in a block of 12 calendar months preceding the date of his termination i.e. 18/19th July, 1996. Even the petitioner has not pleaded that at the time of the termination of his services, any person junior to him was retained in service by the respondents or after his retrenchment, new/fresh hands have been engaged by his adversaries. Infact, none of the ingredients of Sections 25-F, 25-G and 25-H of the Act has been pleaded by the petitioner. The evidence led by the petitioner (PW1) being beyond his pleadings cannot be read. In view of the contents of the statement of claim/demand, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services have been wrongly and illegally terminated by his opponents.

29. No reference has been received from the appropriate Govt. regarding providing the fictional breaks to the petitioner by the respondents. The said controversy, if any, between the parties being beyond the terms of the reference cannot be looked into by this Court.

30. Otherwise too, from the admissions made by the petitioner (PW1), it can be gathered that his services were engaged by the respondents in different seasonal schemes/projects depending upon the availability of the work and the budget. The evidence on the file clarifies that lastly the petitioner worked from 5th June, 1996 to 18th July, 1996 on Crate Check Dam, Rohin under a committee headed by Shri Kanshi Ram. The latter had made a report (Ex.RW1/G) to the respondent No.2 that after 18th July, 1996, the petitioner did not report for his duties and left the service.

31. The petitioner has not placed on the record the copy of the Award, if any, passed by this Court/Tribunal in favour of Shri Thakur Singh evidencing that the facts of his case are similar to the case of Shri Thakur Singh whose services have already been regularized by the respondents.

32. Ex. RW1/J is the copy of an Award dated 27.10.1999 pronounced by the Id. Presiding Judge, Labour Court, Shimla in Reference No.132 of 1996, titled as Shri Rattan Singh and 4 others versus Sub Divisional Soil Conservation Officer, Ghumarwin and another. Its perusal discloses that almost on similar facts the retrenchment/termination from services was challenged by Shri Rattan Singh and his associates. The claim petition was dismissed by the Court/Tribunal by holding that the benefit of Section 25-F of the Act cannot be extended to seasonal employees, even if, they have put in 240 days of service. The Award dated 27.10.1999 has already attained the finality.

33. Taking into account the above noted facts, I have no hesitation to conclude that the claim petition is not maintainable in the present form. The alleged termination of the services of the petitioner by the respondents is neither illegal nor unjustified. The petitioner/claimant is not entitled to any relief. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim.

34. These issues are decided against the petitioner and in favour of the respondents.

ISSUE NO.3

35. Not pressed

RELIEF (ISSUE NO.4)

36. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/-.

37. The reference is answered in the aforesaid terms.

38. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

39. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of March, 2013.

By order,

Sd/-

*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 120/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Prabhat Singh s/o Shri Chet Ram, r/o Village Rohata, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Prabhat Singh S/O Shri Chet Ram, Village Rohata, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during February, 1999 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 02.2.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 02.2.1999 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain.

During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of May, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to

the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year February, 1999 to August, 2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Prabhat Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway

Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.5.1999.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 40 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 79/2012

Date of Institution : 06.01.2012

Date of Decision : 20.03.2013

Shri Pradhan Chand s/o Shri Beli Ram, r/o Village Haler Kalan, Tehsil & District Kangra, H.P. . *Petitioner.*

Versus

The Temple Officer, Mata Shree Brijeshwari Devi Mandir, Kangra, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Ajay Chaudhary, Adv.

For the Respondent : Sh. K.C. Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Sh. Pradhan Chand S/O Sh. Beli Ram, Nagaria (Drum Beater) w.e.f. 15.10.2002 by The Temple Officer, Mata Shree Brijeshwari Devi Mandir, Kangra, H.P. on the allegation of theft, without serving notice, without conducting enquiry and without following the provisions of the Industrial Disputes Act, 1947 as alleged by workman, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the concerned employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:

- “1. That the applicant is the permanent resident of Haler Kalan, Jayanti Vihar Colony Tehsil and District Kangra. Due to the poor family circumstances he could not get education up to the required standards and due to poor economic conditions of the family he offered himself to work as a Drum beater (Nagaria) with the Mata Brijeshwari Temple kangra in the year 1995 on the compassionate grounds after the sudden demise of his father order dated 25-11-1994. Thereafter the applicant performed his duties to the best of his sincerity and devotion and to the satisfaction of his superiors as no complaint whatsoever was ever conveyed to him regarding his working.
2. That the Applicant was the subscriber of the employment provident fund vide account number HP/1804/36 to the tune of Rs.254/- in the year 1999-2000, 2000-2001, 2001-2002 respectively.
3. That on dated 15-10-2002 when the applicant was busy to his job and one of the devotee's Shri Choote Lal Arya's wife a sum of Rs.4000/- fell down on the floor and the beggars who were present in the temple they picked up the money and ran away from the backside of the temple. When the said lady made hue and cry about the loss of her money, the applicant immediately ran after the beggars and caught them red

- handed over standing with one Sh. Jaggo Ram. Thereafter the Applicant heard the message from the loud speaker of the temple regarding the loss of the above said money. The Applicant rushed to the Temple Office and told that the entire incident to the Temple Officer. After that the temple Officer called Sehnai badak, Sh. Jaago Ram and threatened him whether you have received the money from the beggars otherwise your services will be terminated and under this pressure the above named Jaggo Ram spoke the name of the Applicant in the above said incident whereas the Applicant simply helped the said devotee in the recovery of her money. Moreover, the applicant was slapped by the Temple Officer and threatened the applicant under pressure and coercion took the signatures of the applicant on the blank paper in the presence of the employees of the temple and terminated the services of the applicant without any show cause notice.
4. That there was enmity of the entire staff of the Temple Officer with the applicant and they wanted to adjust some other person which was very near and dear to the Temple Officer. the services of the applicant was retrenched without issuing any show cause notice, calling for the inquiry, preparing the charge sheet and no opportunity was granted to the applicant for giving any defence. Moreover, it is settled law that the person who has inquired the matter cannot impose the penalty against the delinquent as was done in the case of the applicant.
 5. That as per the rules of Kangra District Temple Trust Employees Services (revised pay) Rules 2000, only the Assistant Commissioner shall initiate the disciplinary action and award punishment. However, the said officer will take action only after obtaining approval from the Commissioner. Moreover, employees so removed shall be paid compensation at the rate applicable for compulsory retirement.
 6. That the impugned act of omission and commission of the Temple Officer is bad on the following grounds:—
 - (a) That the termination of the services of the applicant in the post of Nagaria is highly unjust, illegal and contrary to the natural justice without issuance of the show cause notice.
 - (b) That the applicant has served in the above said post for more than seven continuously without any break and the termination of the applicant's services without issuance of notice is illegal.
 - (c) That in the present case no inquiry was conducted, no charges were framed and no right to put the defence was given to the applicant.
 7. That the applicant so many times approached the Temple Officer as whereas the Commissioner for the redressal of his grievances firstly on 23-9-03 and subsequently so many times but till to date no action has been taken and every time they have stated that the termination of the Applicant will be set-aside and the matter will be sent to the higher authorities for consideration.
 8. That the termination is otherwise also wrong because no retrenchment benefits as prescribed under the Industrial Disputes Act have been paid to the applicant. Therefore, the termination is bad.

9. That the applicant is only bread earner of the family. He besides himself has his family to support. Because of his non-employment, the family of the applicant is at the verge of starvation and therefore, he has no other alternative but to approach the honorable court for justice. At the time of termination of services the applicant was having three sons school going and wife and due to the termination of the services the sons of the applicant could not get good standards of education”.

As such, he (petitioner) prays that the termination order be upset. The respondent be directed to reinstate his services with all consequential service benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the instant dispute does not fall within the purview of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short). This Court has no jurisdiction to hear and decide the matter. The petitioner is not a workman as defined in the Act. The claim petition is time barred. The petitioner is estopped from filing the claim petition by his act, conduct and waiver of right, if any. He (petitioner) has suppressed the true facts from the Court and has coined a totally false story. He has no cause of action. On merits, paras 1 to 9 of the reply are reproduced below verbatim for ready reference:—

“1. Para 1 of the statement of claim is not admitted as correct, hence is denied. Moreover the averments contained therein have no bearing on the merits of the case. It is, however, submitted that the petitioner was doing the part-time work as a Nagarchi (drum beater) at the entry of the Mandir Shree Brijeshwari Mata Kangra since 1.1.1995 on contractual emoluments. He does not fall within the category of a worker within the ambit of the Industrial Disputes Act. Apart from the emoluments, the Nagarchi also accepts donations of the pilgrims. Rest of the averments of this para of the statement of claim is not admitted correct, hence denied.

2. Para 2 of the statement is required to be proved by the applicant.

3 to 6: All the averments contained in these paras of the statement of claim are false, wrong, distorted, hence are denied emphatically. It is denied that any beggars were present in the temple and they picked up the money of the wife of Sh. Chhote Lal Arya, or that they were apprehended by the applicant and that the entire incident was narrated by the applicant to the Temple Officer. It is also incorrect that the applicant was slapped by the Temple Officer and obtained signature of the applicant on blank papers and terminated his service and so on. It is also false and baseless that any one had any enmity with the applicant and the staff wanted to adjust some other person in place of the applicant. Who was that very near and dear to the temple Officer is not named by the applicant. It is denied that no procedure was followed while doing away with the services of the applicant. Para 5 of the statement of claim is not applicable in the case of the applicant. The averments of para 6 of the claim is also false, and denied. The true facts are narrated as follows:- That on 15.10.2002, the applicant alongwith the Shehnai Vadak Jaggo Ram was present at the entry point of the Temple and a line of pilgrims had extended upto the entry point and so on waiting for their turn in the Sanctum. A lady (the wife of Sh. Chhote Lal Maurya) happened to had dropped her money wrapped in a hand kerchief inadvertently. This was noticed by the applicant. He, instead of bringing this to the notice of the lady or any other person, picked up the same and then slipped away alongwith said Jaggo Ram from the back-yard of the Temple deodi. There he shared the money after opening the kerchief. He gave Ra.900/- to Sh. Jaggo Ram and kept the remaining amount, for himself. There he hid the remaining money, and both, the applicant and Jaggo Ram came back and sat at the place from where they had gone and begane with their work. At that time the said lady noticed that she had lost her kerchief containing the money and she raised alarm and

also informed and got announced this loss in the Temple area through the Mike of the Temple. This mike is just near to the sitting place of the applicant and Jaggo Ram. But both of them remained quiet. In the meanwhile some other people who were standing just behind the lady in the line, told that the kerchief which had dropped, was picked up by the drum beater (Nagarchi) wearing Kameej and Payjama. At that time the Temple Officer was on leave on account of sprain to his ankle and the Temple Officer's duty was entrusted to the Naib Tehsildar Kangra, who was deputed to count the cash offerings etc. in the Temple. The Naib Tehsildar, then on duty, called the applicant and Sh. Jaggo Ram to his office of the Temple and enquired about the incident. But the applicant declined to had picked up the kerchief having money wrapped in that. When the Naib Tehsildar firmly insisted, then the applicant confessed of having picked up the kerchief and sharing the money amounting to Rs.900/- with Jaggo Ram and hiding the remaining money behind the Deodi of the Mandir. The Naib Tehsildar then asked the applicant to bring back the money hidden behind the deodi of the Mandir. The money was brought back by both of them and then the same was entrusted/handed over to Sh. Chhote Lal Maurya s/o Sh. Ram Chand Nagla PO Bhanpur Nagdiya, Distt. Eta, and a receipt was obtained from him to that effect. The statement of both the delinquents was recorded in the presence of various persons. The statement of Sh. Dhani Ram Pharmascist and one Kuleep Singh Sewadar was also recorded then and there about this happening. That the applicant and Jaggo Ram, by their acts and conduct have caused damage to the Temple administration and the integrity of the Religious place has been tried to be lowered. The matter was considered and deliberated and thereafter the Temple Officer terminated the services of both of them by an order, after making due enquiry. The order was not passed by the Naib Tehsildar, who conducted the enquiry.

7. Para 7 of the claim is denied. It is denied that the applicant has been told that the services would be restored.

8. Para 8 of the claim is denied. Vide letter dated 25.6.2003 an amount of Rs.5000/- and 3000/- respectively was sanctioned to the applicant and Jaggo Ram, as compensation.

9. Para 9 of the claim has no bearing on the case and hence is denied". In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he was a part time worker and was serving on contractual basis. He did not accept the donations from the pilgrims. The salary was being paid to him by the respondent/temple. He did not commit any theft or share the money with Shri Jago Ram as alleged. Neither any proper inquiry was conducted nor he was given an opportunity of being heard.

5. Per order dated 17.5.2012, following issues were struck:—

1. Whether the termination of services of the petitioner by the respondent is illegal and unjustified as alleged? . . .OPP.
2. Whether the petitioner has a cause of action? . . .OPP.
3. Whether this Court has no jurisdiction to hear and decide the matter? . . .OPR.
4. Whether the petition is time barred? . . .OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? . . .OPR.

6. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? . . . OPR.

7. Relief.

6. In support of the arguments, the ld. counsel for the petitioner has cited the below mentioned rulings:—

- i. Union of India v. Y.S. Sandhu, Ex-Inspector, AIR 2009 Supreme Court 161.
- ii. Hari Shanker Sharma v. Commissioner, Agra Division, Agra and others, AIR 1987 Supreme Court 556.
- iii. Anil Kumar vs. Presiding Officer and others, AIR 1985 Supreme Court 1121.
- iv. M.V. Bijlani v. Union of India & Ors., AIR 2006 Supreme Court 3475.
- v. Union of India & Ors. v. Prakash Kumar Tandon, AIR 2009 Supreme Court 1375.
- vi. Baldev Singh v. Presiding Officer, Labour Court, Patiala and another, AIR 1987 Supreme Court 104 I have scanned all these authorities. With humility, I feel it apposite to mention here that they turned on their own facts and do not hold good in view of the facts and circumstances of the present lis.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : No

Issue No.3 : No

Issue No.4 : Not pressed

Issue No.5 : Yes

Issue No.6 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

9. The petitioner Shri Pradhan Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he stated that he and his witness Shri Jago Ram (PW2) used to sit together as well as play the nagara (drums) and shehnai. He admitted that on 15.10.2002 due to the navaratri, a lot of pilgrims had come to the temple to pay the obeisance and were standing in a line. He also admitted that the handkerchief of one of the lady pilgrim having the money fell from her hand. He denied the story put forth by the respondent that he (PW1) picked up the handkerchief, opened it, gave Rs.900/- to Shri Jago Ram and kept the remaining money with him. He admitted that the lady had raised an alarm that she has lost her handkerchief having the money. He denied that he had admitted his guilt before the Naib Tehsildar who was officiating as the Temple Officer, on the crucial day. He admitted that the statement Mark-A (later on exhibited as Ex. R1) bears his signatures in the red circle. He (PW1) was slapped

by the Naib Tehsildar and his statement was recorded under duress. He (PW1) did not make any complaint to the effect that the Naib Tehsildar slapped him and procured his signatures on the statement Mark-A forcibly. He admitted that the letter Mark-B (subsequently exhibited as Ex. R7) has been signed by him. He also admitted that the temple authorities had paid him Rs.5000/- as compensation on compassionate ground which was received by him in the year 2003. He denied that because of his wrongful act, he caused the damage to the grace/dignity of the holy shrine and has invented a false story for re-employment etc.

10. Shri Jago Ram (PW2) supported the cause of the petitioner. Ex. PW2/A is the affidavit submitted by him in terms of Order 18 Rule 4 CPC. In the cross-examination, he admitted that the handkerchief of a lady having the money had fallen down. That handkerchief was not picked up by the petitioner in his presence. He denied that the petitioner took the handkerchief behind the temple, opened the same and gave Rs.900/- to him (PW2). He feigned ignorance about the fact that the remaining amount was concealed by the petitioner. He too denied the version of the respondent. He even denied making the statement Mark-C (later on exhibited as Ex.R2) during the enquiry proceedings. His thumb impression was obtained by the Naib Tehsildar on a blank paper forcibly. Till dated he has not lodged any complaint to the effect that the Naib Tehsildar took his thumb mark on a blank paper by threatening him. He admitted that Rs.3000/- were paid to him as compensation on compassionate grounds by the respondent/temple. No child (beggar) picked up the handkerchief having the money in his (PW2's) presence. He denied that he is telling the lies after joining hands with the petitioner.

11. Conversely, Shri Surinder Kumar, Sr. Assistant, Temple Office, Mata Sh. Brijeshwari Mandir, Kangra testified as RW1. He brought the file of the inquiry proceedings and proved the documents Exts. R1 to R8. Exts. R1 to R4 are the copies of the statement made by Shri Pradhan Chand (petitioner), Shri Jago Ram (PW2), Shri Dhani Ram and Shri Kuldev Singh, respectively, during the inquiry proceedings. Ex. R5 is the copy of an office order dated 16th October, 2002 issued by the respondent. Vide this order, the services of the petitioner and his companion Shri Jago Ram were terminated with immediate effect as they were found guilty of committing the theft. Ex. R6 is the copy of an application preferred by Shri Chhote Lal Maurya before the respondent. Shri Chhote Lal Maurya is the person whose wife had lost the money. Exts. R7 and R8 are the copies of the applications dated 07.6.2003 made by the petitioner and Shri Jago Ram before the Commissioner of the Temple to forgive them. In the application Ex. R7, the petitioner also requested that in case he is not to be excused for his fault of picking up the handkerchief containing Rs.4000/-, the provident fund and the dues payable to him should be released in his favour. In the cross-examination, he (RW1) stated that the statements of the witnesses (including PWs 1 and 2) were recorded by him (RW1) during the inquiry proceedings as per their version.

12. Shri Kuldev Singh (RW2) was also an employee of the temple in the year 2002. He supported the version of the respondent. Ex. R4 is the copy of the statement made by him before the Temple Officer at the time of the inquiry. In the cross-examination, he denied that he has given a phoney statement.

13. RW3 is Shri Pawan Kumar, Temple Officer (respondent). He testified that on the relevant day i.e. 15.10.2002, Shri Amrik Singh, Naib Tehsildar was officiating as the Temple Officer. He has expired. As per the record, the petitioner and Shri Jago Ram have received Rs.5,000/- and Rs.3,000/-, respectively, as compensation on compassionate grounds after being freed from their duties.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a Drum Beater (Nagaria) in the year 1995 and he worked as such up-to 15.10.2002. The version of the petitioner is that on the said date, his services were wrongly and illegally terminated by the

respondent. While denying the said fact, the respondent has pleaded that the petitioner was guilty of picking up the handkerchief of a lady pilgrim having the money and committing the theft. An inquiry was held against the petitioner in which he was found guilty. Only thereafter, his services were disengaged per order dated 16.10.2002, the copy of which is Ex.R5. Moreover, the petitioner confessed his guilt and waived the right, if any, per application dated 07.6.2003 whereafter, Rs.5,000/- were paid to him as compensation on compassionate grounds which was received by him without any protest.

15. Even if, the petitioner was not charge-sheeted and a proper inquiry was not conducted against him, the same will not come to his rescue in view of his act and conduct. The statement dated 15.10.2002 (Ex. R1) made by the petitioner before the Temple Officer at the time of the inquiry and, thereafter, his application/letter dated 07.6.2003 (Ex. R7) go to show that the petitioner had admitted his fault in so many words. He admitted that he had picked up the handkerchief having Rs.4,000/-.

16. As already mentioned, after the culmination of the inquiry proceedings, the services of the petitioner and his associate Shri Jago Ram were terminated by the respondent vide office order dated 16.10.2002, the copy of which is Ex. R5. After the disengagement of the services of the petitioner, he preferred an application dated 07.6.2003 (Ex.R7) before the Commissioner of the Temple. In this application, he requested that he be pardoned for his wrongful act and reengaged so that he can nurture his family. In case he is not to be re-engaged, his money lying deposited in the provident fund and other dues be paid to him. Pursuant to the application Ex. R7 moved by the petitioner, the Commissioner of the Temple sanctioned Rs.5,000/- as compensation on compassionate grounds in the name of the petitioner per order/letter dated 25.6.2003. The compensation amount was accepted by the petitioner without any protest.

17. It is not the case of the petitioner that the application Ex. R7 was preferred by him under duress. Since the petitioner himself admitted the guilt, left the service and received compensation, I am at a loss to understand as to how and on what basis it lies in his mouth to say that his services were wrongly and illegally terminated by the respondent. It is not the case of the petitioner that at the time of the termination of his services, any person junior to him was retained in service by the respondent. It is also not his case that after his alleged illegal retrenchment, new/fresh hands have been engaged by the respondent. Further, it is not the version of the petitioner that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 15.10.2002. The provisions of Sections 25-F, 25-G and 25-H of the Act are not attracted in this case.

18. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim by twisting the facts. The claim petition preferred by him is belated and fallacious. He is not entitled to any relief.

19. This issue is decided against the petitioner and in favour of the respondent.

ISSUES NO. 2,5 AND 6

20. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

21. Taking into account my findings on issue No.1, it is held that the petitioner has no cause of action. He is estopped from filing the claim petition by his act and conduct. He (petitioner) has suppressed the true and material facts from the Court. His act and conduct disentitles him from seeking the indulgence of the Court.

22. These issues are also decided against the petitioner and in favour of the respondent.

ISSUE NO.3

23. Ld. counsel for the respondent contended that since the petitioner was a part time employee, he cannot be termed as a 'workman' as defined in Section 2(s) of the Act. This assertion of the ld. counsel deserves outright rejection in view of the observations made by the Hon'ble Apex Court in Divisional Manager, New India Assurance Co. Ltd. v. A. Sankaralingam, AIR 2009 Supreme Court 309. It was held by the Hon'ble Court: "Industrial Dispute Act (14 of 1947), Ss. 2(s), 25-B, 25-F-Parttime employee-Status of- Employee employed on part-time basis but under control and supervision of employer is a "workman"- He would be entitled to benefit of continuous service under S. 25-B and protection of S.25-F".

24. This issue is, thus, decided in favour of the petitioner and against his opponent.

ISSUE NO.4

25. Not pressed.

RELIEF (ISSUE NO.7)

26. As a sequel to my findings on the various issues, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3,000/-.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 121/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Rajesh Kumar s/o Shri Shyam Singh, r/o Village Kaunsal, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P.
..Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Rajesh Kumar S/O Shri Shyam Singh Village Kaunsal, P.O. Bassi, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 1998 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 03.11.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 03.11.1998 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of January, 1999. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent’s) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent’s) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of ‘last come first go’ was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner’s) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 1998 to August, 2007 is illegal and unjustified as alleged? . .OPP.
2. Whether the petition is not maintainable in the present form? . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Rajesh Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.
11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).
12. Ex. RW1/C is the mandays chart relating to the petitioner.
13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.
14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the years 1998/1999 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 06.1.1999.
15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.
16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.
17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).
18. While testifying in the Court as PW1, the petitioner has given his age as 33 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.
19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 33/2010

Date of Institution : 23.04.2010

Date of Decision : 11.03.2013

Shri Rattan Lal s/o Shri Amar Singh, r/o Village & P.O. Langna, Tehsil Joginder Nagar,
District Mandi, H.P. .*Petitioner.*

Versus

Proprietor, M/S Speed Automobiles, Maruti Authorized Service Station, Near Gurdwara
Sahib, Joginder Nagar, District Mandi, H.P. .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Kamal Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Rattan Lal S/O Shri Amar Singh by the Proprietor, M/S Speed Automobiles, Maruti Authorized Service Station, Near Gurdwara Sahib, Joginder Nagar, District Mandi, H.P. w.e.f. 16-04-08 without serving him charge sheet, without holding enquiry and without complying with the provisions of The Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that the respondent/Service Station was started w.e.f. 04.10.2005. His services were engaged as a Senior Technician by the respondent on that very day. At the time of his (petitioner's) engagement, no appointment order/letter was issued by the respondent. He worked continuously up-to 31.3.2008. On 1st April, 2008, he was not allowed to perform his duties by the respondent. On that day, his services were terminated by the Manager of the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor he was charge-sheeted. Even the retrenchment compensation was not paid to him. He had completed 240 days of work in each and every calendar year of his employment as well as in a block of 12 calendar months preceding the date/month of his termination i.e. 01.4.2008. During the period of his employment, his work and conduct was satisfactory. No complaint was made against him by the management and the customers of the respondent. At the time of the termination of his services, the person junior to him namely Sh. Sanjay Kumar (Jr. Technician/Mechanic) was retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. S/Sh. Mahesh Kumar (Works Inspector), Ravinder Kumar (Store Keeper), Sanjay Kumar (Junior Technician), Lokesh Sharma (Helper), Dev Raj (Helper), Vinod Kumar (Washer Man), Jai Singh (Helper), Davinder Kumar (Dainter), Dharam Pal (Painter), Partap Singh, Mahinder Singh (Helpers) Aashish Sharma (In charge) and Man Chand Katoch (Manager) were working with him (petitioner) in the Service Station. He was not paid the wages @ Rs.6000/- per month, which amount comes to Rs.42,000/- for the period September, 2007 to 31.03.2008. The establishment of the respondent falls in the notified area near the Gurdwara at Joginder Nagar. Shops and Commercial Establishments Act applies to the respondent. The latter did not extend the benefit of earned leave, casual leave, medical leave and the national festival holidays to him (petitioner) during the period of his engagement from 04.10.2005 to 31.3.2008. From the date of his termination, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

- “i) The Hon’ble Court may kindly be set aside the unlawful termination order dated 01 04 2008 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- ii) The Hon’ble Court may kindly be again directed to respondent to pay the due wages of applicant Rs.42000/- with interest @ 12% per year from the due date to till the date of realization the amount”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner was not a workman as defined in the Act. This Court has no jurisdiction to entertain and decide the matter. The claim petition has not been instituted in the prescribed form. The petitioner is estopped from filing the petition by his act, conduct and acquiescence. He (respondent) does not fall within the purview of the Act. The claim petition has not been properly verified. The same is bad for non joinder of the necessary parties. On merits, it has been denied that the services of the petitioner were engaged as a Senior Technician on 04.10.2005. Actually, the petitioner was kept on the Service Station for probation of six months per verbal appointment order w.e.f. 01.1.2008. As per the appointment order, it was mandatory for the petitioner to work satisfactorily. No valid relationship of master and servant existed between the parties. The services of the petitioner were never disengaged as alleged. He did not work for 240 days as claimed. Only honorarium and not the wages were paid to the petitioner. During the period of employment, the work and conduct of the petitioner was unsatisfactory. On 1st April, 2008, the petitioner left the Service Station of his own. On 16.4.2008, when he reported for work after his absence of 15 days, he was not allowed to work. The petitioner did not apply for leave of any kind. He remained willfully absent from duty. Though, the petitioner was not a workman yet an employee is bound to maintain the discipline. The services of the petitioner were terminated by a verbal order as his work was unsatisfactory and due to the indiscipline. In the month of January, 2008, the petitioner, Shri Dev Raj, Shri Rakesh Kumar and four other persons were issued the identity cards by him (respondent). The petitioner and some other persons got effected a few changes in the identity cards from Shivam Colour Lab, Joginder Nagar without his (respondent’s) authority and approval. The petitioner is guilty of misconduct. He (respondent) lost the confidence in the petitioner and told him that his services are no more required. The petitioner was not a regular appointee. He was only a probationer. No person junior to the petitioner has been retained in service or engaged/re-engaged. The identity card was tampered by the petitioner with a malafide intention to show that he is regular worker. No provision of the Act has been flouted. He owes nothing to the petitioner. Moreover, the petitioner had taken Rs.15,000/- from him (respondent) as loan in order to fulfill his domestic obligations. The loan was termed as advance amount. The petitioner promised and undertook to return the advance money in monthly installments of Rs.2000/- each which he failed to do. A receipt regarding the loan amount was also executed by the petitioner. He (respondent) is entitled to recover the loan/advance amount from his opponent. The petitioner is not entitled to any relief. In these circumstances, the respondent prays that the petition in hand be rejected and the petitioner directed to refund Rs.15000/- to him.

4. In the rejoinder, the petitioner has reiterated the contents of the petition and refuted the objections put forth by the respondent. It has been disputed that his services were engaged w.e.f. 01.1.2008 on probation for a period of six months. He never abandoned the job. Demand notice dated 04.4.2008 was served upon the respondent by him after the termination of his services. No

identity card was issued by the respondent in the month of January, 2008. He did not get effected any change in the identity card as alleged. His work and conduct was upto the mark. He has not taken the loan of Rs.15,000/- from his adversary. No receipt was ever executed.

5. Vide order dated 24.3.2011, following issues were struck by my Id. Predecessor:

1. Whether the termination of the petitioner w.e.f. 16.4.2008 is violative of the provision of Sections 25-F & 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? . . .OPR.
3. Whether this Tribunal has no jurisdiction to entertain the present lis as alleged. If so, to what effect? . . .OPR.
4. Relief.
6. I have heard the Id. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUES NO.1 AND 2

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner, Shri Rattan Lal stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he denied that his services were initially engaged for six months on probation w.e.f. 01.1.2008. He also denied that on 01.4.2008 he voluntarily left the service and absented from his duties. Further, he denied that he reported for duty on 16.4.2008 and the respondent refused to reemploy him due to his willful absence from work. He denied that he and Shri Mahesh Kumar etc. got the changes made in the identity card issued by the respondent from Shivam Colour Lab, Joginder Nagar. He refuted that he has instituted a phoney petition.

10. Conversely, Shri Sanjay Sharma, owner of the respondent/concern testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. In the cross-examination, he denied that the services of the petitioner were disengaged in a wrongful manner on 01.4.2008. When the petitioner abandoned the job, no notice was given to him asking him to resume the work. Even no departmental proceedings were initiated against the petitioner. His Store Clerk used to mark the attendance of the probationers daily in a copy. That copy has not been produced by him. Self stated, in the month of September, 2009, the building of the Service Station gave way due to the floods. The record and vehicles were damaged on that day. He denied that he is telling the lies.

11. Shri Sohan Singh (RW2) is running a lab in the name and style of Shivam Colour Lab, Main Bazar, Joginder Nagar. He supported the version of the respondent regarding making the changes/tampering the identity cards. Ex. RW2/A is the affidavit filed by him as per Order 18, Rule 4 CPC. In the cross-examination, he stated that the order regarding the preparation/printing of the identity card was issued by the respondent. He denied that the identity cards were prepared in the year 2007. Volunteered, the same saw the light of the day in the month of January, 2008. 12. RW3 is Shri Lakesh Kumar. In his affidavit Ex. RW3/A submitted under Order 18 Rule 4 CPC, he stated that in the month of January, 2008, the management had issued eight identity cards to the employees of the concern. An identity card was also issued in his (RW3's) favour since he was working with the respondent. After the issuance of the identity cards, within a period of one week, he (RW3) alongwith the petitioner and two other workmen visited Shivam Colour Lab, Joginder Nagar. They got the changes effected in the identity cards without the permission and the authority of the management. He (RW3) was misguided by the petitioner and Shri Mahesh Kumar because of which he got the changes in the identity card made. In the cross-examination, he denied that even now he is working with the respondent. When he (RW3) left the service, the petitioner was serving the respondent.

13. Ex. PW1/B is the copy of the identity card allegedly issued by the respondent in the name of the petitioner. The date of issue has been mentioned as 21/10/2005.

14. Ex. R1 is the copy of the demand notice served upon the respondent by the petitioner under Section 2-A of the Act. Reply Ex. R2 was given to it by the respondent.

15. The version of the petitioner is that his services were engaged by the respondent as a Senior Technician w.e.f. 04.10.2005. The said fact has been denied by the latter. Instead, the respondent has pleaded that the petitioner was appointed as a probationer for six months w.e.f. 01.1.2008.

16. The petitioner has not examined any co-worker or produced any document to show that his services were initially engaged by the respondent on 04.10.2005 as claimed. The bald statement made by the petitioner in this regard cannot be taken as a gospel truth. True it is that in the identity card Ex. PW1/B the date of issue has been recorded as 21/10/2005. From the statements made by RWs 1 to 3, it can be gathered that the identity cards were got prepared and issued by the respondent only in the month of January, 2008. The petitioner and others got effected some changes in the identity cards without the permission and consent of the respondent. The depositions in this regard made by RWs 1 to 3 to un-rebutted and unchallenged on the record. It is trite that if a fact remains un-rebutted during the cross-examination, the same is to be taken as admitted by the other side.

17. There is no cogent and convincing evidence on the record to show that the petitioner served the respondent for 240 days in a block of 12 calendar months anterior to the date of his alleged termination. The provisions of Section 25-F of the Act are not attracted in this case.

18. The petitioner has not produced any document viz seniority list etc. to show that any person junior to him was retained in service by the respondent at the time of the retrenchment of his services. For this reason, it cannot be said that the respondent has contravened the provisions of Section 25-G of the Act.

19. Otherwise too, Section 10 (4) of the Act mandates that this Court/Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the payment due to the petitioner or the non extension of the benefit of the earned leave

etc. to him. As per the reference, the services of the petitioner were terminated by a verbal order w.e.f. 16.4.2008. The order of termination dated 16.4.2008 has not been impugned by the petitioner on any ground. He has questioned the legality and validity of the termination order dated 01.4.2008 in the statement of claim/demand and the rejoinder. No retrenchment order was passed on that day i.e. 01.4.2008 by the respondent. Since the retrenchment order dated 16.4.2008 (as per the reference) has not been challenged by the petitioner on any ground by no stretch of imagination, it can be concluded that the said order is bad in the eyes of law.

20. Such being the situation, I have no hesitation to conclude that the claim petition is not maintainable. The petitioner is not entitled to any relief. No provision of the Act has been flouted by the respondent. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim.

21. These issues are decided against the petitioner and in favour of the respondent.

ISSUE NO.3

22. Not pressed.

RELIEF (ISSUE NO.4)

23. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Ref No. : 122/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Sarwan Kumar s/o Shri Karmu Ram, r/o Village Bharmesh, P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P.
. .Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
. Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Sarwan Kumar S/O Shri Karmu Ram, Village Bharmesh, P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2002 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer”?

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 08.11.2002 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 08.11.2002 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of November, 2003. His (respondent’s) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent’s) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent’s) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of ‘last come first go’ was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary party to the petition. His (petitioner’s) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work.

5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2002 to August, 2007 is illegal and unjustified as alleged? . . .OPP.

2. Whether the petition is not maintainable in the present form? . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Sarwan Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the years 2002/2003 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.11.2003.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 45 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 168/2010

Date of Institution : 20.5.2010

Date of Decision : 20.03.2013

Shri Subhash Chand s/o Shri Ulka Ram, r/o Village & P.O. Gunehar, Tehsil Baijnath,
District Kangra, H.P. . .Petitioner.

Versus

Executive Engineer, H.P.P.W.D. Division, Baijnath, District Kangra, H.P. . . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the action of the Executive Engineer, H.P.P.W.D. Division, Baijnath, District Kangra, H.P. not to re-engage Shri Subhash Chand S/O Shri Ulka Ram w.e.f. 30-05-2008 after the decision of the Case No.-133/2005 and terminated the services of the above workman without serving him charge sheet, without holding enquiry and without complying the provisions of The Industrial Disputes Act, 1947 is legal & justified? If not, to what back wages, seniority, service benefits and relief the above aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a Chowkidar on muster roll basis by the respondent in the month of December, 2002. He worked continuously as such up-to 13.9.2005 and completed 240 days of work in each and every calendar year of his engagement as well as in a block of 12 calendar months preceding the date of his termination. During the period of the employment, his work and conduct was satisfactory. FIR No.133/2005, dated 19.9.2005 was registered in Police Station, Baijnath under Sections 302, 201 and 34 of the Indian Penal Code pursuant to a false complaint made by Shri Pritam Singh s/o late Shri Shambu Ram, r/o VPO Gunehar, Tehsil Baijnath. He (petitioner) was arrested on 14.9.2005 in the above noted FIR by the police and involved in a false case. He remained in police custody and, thereafter, in the judicial custody. He was granted the bail by the Ld. Sessions Judge, Kangra at Dharamshala after spending three months in the judicial custody. At the time of his arrest, Baijnath police informed the respondent regarding his (petitioner's) arrest. On 15.9.2005, his family members also intimated verbally the respondent, Assistant Engineer and the Junior Engineer regarding the arrest. The respondent/department was well aware about the criminal case and his arrest as the news items were also published in the newspapers. After being granted regular/permanent bail by the Court, he (petitioner) immediately approached the Assistant Engineer in the month of January, 2006 to allow him to join his duties as Chowkidar at Bir. The Assistant Engineer conveyed to him that since the matter is pending before the Court, his services cannot be re-engaged until and unless he is acquitted in the criminal case. During pendency of the criminal case, he time and again approached the respondent to allow him to work, but in vain. Now he has come to know that on 29.8.2008, the police has forwarded untraced report to the Court in FIR No.133/2005 of Police Station, Baijnath. The challan in the said case has not been presented against him (petitioner) in the Court. From September, 2005 onwards, no communication was received by him from the respondent/department to join his duties. He was not willfully absent and his name has been struck off from the rolls of the department by the respondent without complying with the provisions of law. Before the termination of his services, no inquiry was conducted against him. Neither one month notice was served upon him nor the retrenchment compensation was paid. At the time of the termination of his services, the person junior to him namely Shri Sudesh Kumar s/o Shri Jhonfi Ram was retained in service by the respondent. Not only this, after his disengagement, new/fresh workmen have been employed by the respondent. Their names are Shri Ashok Kumar and Shri Anil Kumar etc. He was not given an opportunity of

re-employment. He has already been discharged in the murder case. Certificate dated 29.8.2008 in this regard has been issued by the Station House Officer, Police Station, Baijnath. He never absented from his duties intentionally. His absence was due to the wrongful involvement in the criminal case. Since the respondent did not pay any heed to his requests for re-engagement, a demand notice dated 01.9.2008 was served upon the respondent by him. During the conciliation proceedings the respondent failed to reinstate him in service. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). As such, he (petitioner) prays that the verbal termination order dated 14.9.2005 passed by the respondent be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is premature. The petitioner has suppressed the material facts from the Court. He is estopped from filing the claim petition by his act and conduct. On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the month of December, 2002. He worked as such up-to September, 2005. His mandays chart is annexure R1. Thereafter, the petitioner absented from his duties without any intimation. Subsequently, it surfaced that the petitioner was involved in FIR No.133/2005 of Police Station, Baijnath. As per information received from the police, the petitioner was arrested in the above numbered FIR on 27.9.2005. The incident dates back to 13.9.2005. The petitioner had absconded and was shielding himself from the clutches of the investigation agency after the lodging of the FIR against him. The police or family members of the petitioner never informed him (respondent) regarding his arrest. The petitioner remained in custody from 29.9.2005 to 26.12.2005. He remained unauthorizedly absent from his duties which has resulted in break of service. After being released on bail, the petitioner never approached him (respondent) for reemployment. Moreover, the murder case is still subjudice. The report preferred by the police under Section 173 Cr. P.C. has not attained the finality. No person junior to the petitioner has been retained in service or engaged/re-engaged. Even no new/fresh hands have been employed. The petitioner cannot claim parity with the workmen who worked in continuity with the department. The untraced report submitted by the police is pending decision before a competent Court of law. It stands admitted that the demand notice dated 01.9.2008 was sent by the petitioner. The notice is/was premature and was duly replied. No provision of the Act has been flouted. The petitioner is gainfully employed as an agriculturist. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that he never absented from his duties.

5. Per order dated 23.7.2011, following issues were framed by my Id. Predecessor:—

1. Whether the action of the respondent in not re-engaging the petitioner after 30-5-2008 in pursuance to the some decision rendered in case F.I.R. No.133/2005 is illegal and unjustified as alleged. If so, to what relief the petitioner is entitled to? . . .OPP.
2. Whether the claim petition is not maintainable being premature as alleged. If so, to what effect? . . .OPR.
3. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. The petitioner Shri Subhash Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that an FIR dated 19.9.2005 bearing No. 133/2005 under Sections 302, 201 and 34 of IPC was registered in Police Station, Baijnath pertaining to the incident dated 13.9.2005. He denied that from 13.9.2005 onwards, he absconded and concealed his presence to avoid the arrest. He admitted that he was arrested by the police on 27.9.2005. He was granted the bail on 26.12.2005. He denied that he stopped working as he was arrested by the police. He also denied that new/fresh hands have been engaged by the respondent on compassionate grounds only and the break in service resulted due to his fault.

9. Conversely, Shri J.S. Guleria, Executive Engineer, H.P.P.W.D., Baijnath (respondent), testified as RW1. He corroborated on oath the contents of the reply filed by the respondent. In the cross-examination, he admitted that the petitioner worked continuously from the year 2002 to September, 2005 as well as completed 240 days of work in each and every calendar year of his engagement. He admitted that after 12.9.2005, no show cause notice was given to the petitioner regarding his willful absence from duties. Even no inquiry was initiated against him. He denied that after being granted the bail, the petitioner approached him for re-employment. He feigned ignorance about the fact that the persons junior to the petitioner are working under him. He admitted that when the new/fresh workmen were employed on compassionate grounds an opportunity of re-employment was not afforded to the petitioner. He denied that after September, 2005, the services of new persons were engaged by him.

10. Mark-A is the copy of a certificate dated 29.8.2008 issued by the Station House Officer, Police Station, Baijnath. It depicts that a murder case was registered against the petitioner vide FIR No.133/2005. After the investigation, untraced report was prepared on 30.5.2008. All the accused (including the petitioner) have been discharged in the case.

11. Ex. RW1/A is the copy of a letter dated 13.5.2011 written to the respondent by the SHO, Police Station, Baijnath. In this letter, it has been mentioned that the petitioner was arrested on 27.9.2005 and released on bail per order dated 26.12.2005. Un-traced report has been prepared in the case and forwarded to the Court of Ld. Judicial Magistrate, Ist Class, Baijnath on 05.9.2008. The said report is pending decision before the ld. Magistrate.

12. Ex. RW1/B is the copy of FIR No.133/2005.

13. Exts. RW1/C1 to C9 are the copies of various office orders issued by the respondent evidencing that the services of S/Sh. Arun Kumar and Ashok Kumar etc. were engaged on compassionate grounds.

14. Ex. RW1/D is the mandays chart relating to the petitioner.

15. Exts. P1 to P11 are the copies of the muster rolls issued by the respondent from time to time.

16. Ex. PW1/B is the copy of the demand notice served upon the respondent by the petitioner under Section 2-A of the Act.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager on muster roll basis in the month of December, 2002 and he worked continuously as such up-to 12/13 September, 2005. The version of the petitioner is that on 14.9.2005, his services were wrongly and illegally terminated by the respondent. The latter even did not allow him to resume his duties after being discharged in the murder case. While denying the said fact, the respondent has pleaded that the murder in question took place on 13.9.2005. To avoid the arrest, the petitioner absconded and concealed his presence. He was arrested by the police and thereafter remained in custody. The petitioner abandoned the job on 13.9.2005 so as to escape from the clutches of the investigating agency.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. There is nothing on the record to show that a notice was given to the petitioner by the respondent calling upon him to resume his duties after he allegedly left the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established. Otherwise too, from the evidence available on the record, it can be gathered that the petitioner was arrested in FIR No.133/2005 of Police Station, Baijnath on 27.9.2005 and thereafter granted the bail on 26.12.2005.

19. The respondent (RW1) in his cross-examination admitted that the petitioner had completed 240 days of work in a block of 12 calendar months anterior to the date of his alleged termination i.e. 14.9.2005. The said fact finds support from the mandays chart Ex.RW1/D.

20. Section 25-F of the Act reads thus:

“25-F. Conditions precedent to retrenchment of workmen.—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. There is nothing on the record to show that the provisions of above quoted Section were complied with by the respondent before the termination of the services of the petitioner.

22. The deposition made by RW1 coupled with the copies of the office orders Exts. RW1/C1 to C9 unfold that after the disengagement of the services of the petitioner, new/fresh hands were engaged by the respondent. At the time of engaging new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. The respondent has thus also contravened the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified.

23. Moreover, the discharge certificate Mark-A and the letter Ex. RW1/A written by the SHO, Police Station, Baijnath clarify that un-traced report was prepared in the murder case and forwarded to the Court. All the accused (including the petitioner) were discharged from the case on 30.5.2008 as their involvement was not found in the crime in question. The un-traced report submitted by the police has been accepted by the Ld. Judicial Magistrate Ist Class, Baijnath per order dated 10th January, 2013. The copy of the said order is there on the file. As the complicity of the accused/petitioner was not found in the crime in question, the respondent was duty bound to re-engage his services w.e.f. 30.5.2008 i.e. after the discharge.

24. Such being the situation, it is held that the action of the respondent not to re-employ the petitioner after 30.5.2008 is illegal and unjustified.

25. While testifying in the Court as PW1, the petitioner has given his age as 31 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

27. Not pressed.

RELIEF (ISSUE NO.3)

28. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The action of the respondent not to re-engage the services of the petitioner w.e.f. 30.5.2008 being wrong and illegal is set aside. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 14.9.2005 except back wages. Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Ref No. : 127/2012

Date of Institution : 06.1.2012

Date of Decision : 26.03.2013

Shri Thakur Singh s/o Shri Gopal Singh, r/o Village Nagan, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. . *Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Thakur Singh S/O Shri Gopal Singh R/O Village Nagan, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year, 2002 to Year, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.1.2002 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.1.2002 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has

already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches. On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of January, 2002. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless. In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the entire service record pertaining to him (petitioner) was handed over by the National Highway Division to the respondent. Executive Engineer, National Highway Division, Joginder Nagar is not a necessary

party to the petition. His (petitioner's) services were never disengaged due to the nonavailability of the work and the funds. The persons junior to him have not been employed to meet an emergent situation or due to the exigency of work. 5. Per order dated 29.8.2012, following issues were struck:

1. Whether the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2002 to 2007 is illegal and unjustified as alleged? . . .OPP.
2. Whether the petition is not maintainable in the present form? . . .OPR.
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? . . .OPR.
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? . . .OPR.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Issue No.4 : Not pressed

Relief : Claim petition allowed in part vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1

8. Shri Thakur Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri K.S. Thakur, Executive Engineer, HPPWD, (B&R) Division, Joginder Nagar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him. In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even

now. He admitted that the workmen whose names find mention in Ex. RW1/D were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/A is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/B is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/C is the mandays chart relating to the petitioner.

13. Ex. RW1/D is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the year 2002 and he is working continuously. The mandays chart Ex. RW1/C unfolds that the petitioner was initially employed on 01.1.2002

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/C clarifies that from the date of his initial engagement to 31.8.2007 work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/D) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent. 17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out

of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

19. This issue is decided in favour of the petitioner and against the respondent.

ISSUE NO.2

20. Not pressed.

ISSUE NO.3

21. Taking into account my findings on issue No.1 above, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to the case. He may be a proper party.

22. This issue is also decided in favour of the petitioner and against the respondent.

ISSUE NO.4

23. Not pressed.

RELIEF (ISSUE NO.5)

24. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the date of his initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File after due completion be consigned to the Record Room.

Announced in the open Court today this 26th day of March, 2013.

By order,
Sd/-
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.